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540.0000 TANGIBLE AND INTANGIBLE PROPERTY
See also Buildings and Other Property Affixed to Realty; Sale; Service Enterprises Generally; Coins and Bullion.

540.0015 **Advertisement Placed on Compact Disks.** Where the sale of advertising space on compact disks involves no transfer of tangible personal property to the purchaser of the advertisement, no sales or use tax applies to such advertising charges. 11/21/94.

540.0020 **Advertising Space.** The sale of advertising space on maps does not constitute a sale of tangible personal property and the tax does not apply. 10/8/62.

540.0040 **Blueprints, Drawings and Maps.** Persons engaged in preparing blueprints, drawings and maps, from engineering and other data furnished by customers who are licensed engineers, are producing the end products desired. The gross receipts therefrom constitute a sale of tangible personal property subject to tax without any deduction for labor or service costs. 12/9/55.

540.0060 **Breeding Shares.** The sale of the right to have a thoroughbred mare bred to a particular stallion once each year during the breeding season without charge is not the sale of tangible personal property and is thus not subject to tax. 11/2/62.

540.0110 **Cadaveric Tissues—Transfers.** California sales tax does not apply to fees charged with respect to transfers of human cadaveric tissues to surgeons for transplantation. Such transactions are not regarded for California sales and use tax purposes as sales of tangible personal property. 4/3/96.

540.0160 **Coins and Stamps.** The sale of coins and stamps as collectors' items is subject to tax. 3/10/52.

540.0175 **Coupon Books.** A firm will purchase grocery coupon certificate books from an out-of-state company which, in turn, it will sell to its customers located both inside and outside this state. These coupon books contain 22 certificates entitling the holder to obtain $10.00 worth of coupons (based on the sum of the face values of the coupons) per certificate from the out-of-state company. The purchaser of the coupon book lists 35 different coupon selections on a certificate and mails it to the out-of-state company together with $1.00 for shipping and handling.

Under these facts, the taxpayer is regarded as selling nontaxable rights to receive coupons from the out-of-state company. The actual certificates are a record of the right to receive specified coupons from the out-of-state company and do not constitute the sale of tangible personal property. The taxpayer and its customers' use of these coupon certificate books is regarded as the use of intangible property. Thus, no tax applies to the sale or use of the grocery coupon certificate books inside this state. 10/18/95.

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540.0180 **Coupons.** Sales of service station booklets containing coupons entitling purchaser to various services at no charge, are not sales of tangible personal property, but of an intangible, or a right to receive the various services listed in the coupon. Accordingly, sales tax is only applicable to the printer's charge for printing the coupon booklets; and no sales tax would apply to the sale of the booklets to the public. 10/22/56.

540.0220 **Decals.** The furnishing of decals by an organization to its members for identification purposes in the purchase of merchandise at reduced prices, is not a sale of tangible personal property. However, the sales tax applies to the sale price of the decals to the organization furnishing them to its members. 6/12/56.

540.0240 **Designs, Drawings, Customer Lists, Patents and Goodwill.** Designs, drawings, customer lists, patents and goodwill of an out-of-state corporation were purchased by an in-state purchaser. Since the designs and drawings are tangible personal property, they are subject to use tax measured by the portion of the purchase price reasonably attributable thereto. The customer lists, patents, and goodwill are intangibles. Accordingly, the portion of the purchase price reasonably attributable to these items is not subject to tax. The part of the purchase price attributable to the patent would also be subject to use tax if the patent was necessary to operate machinery or equipment that was also purchased. 8/10/66; 6/7/84. (Am. 2001–3).

540.0280 **Fractional Interest, Tangible Personal Property, Transfer of.** When tenants in common transfer an interest in tangible personal property to another party, a sale of tangible personal property results, taxable measured by the price paid for the interest purchased. 9/16/66.

540.0300 **Horse Syndicate Agreements.** Sales of shares pursuant to syndication of a horse passes an undivided ownership interest in the horse to the buyer. Such sales are sales of tangible personal property and subject to sales tax. 11/12/65.

540.0301 **Horse Syndication Agreements.** Sales of horse syndication shares are sales of undivided ownership interests in the horse. These sales are sales of tangible personal property, not partnership interests or intangibles. (See also 540.0300.) 8/5/94.

540.0310 **Human Body Parts.** Sales tax does not apply to sales of human body parts for medical usage. 1/21/77.

540.0320 **Maps.** The sale of a copy of an official map describing the size and location of real property is a sale of tangible personal property subject to sales tax. 4/26/55.

540.0332 **Pay Per View Movies Over Hotel's Television System.** A hotel has a service whereby hotel guests can view movies on a pay-per-view basis in their hotel rooms by turning the guest room's television to the appropriate channel. The hotel's agreement with the provider of the movies calls for the provider to install certain equipment on the hotel's premises for use in showing movies to

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hotel guests over the hotel's television system. The movies, on cassettes, will be provided to the hotel, loaded into the equipment by the hotel.

Tax does not apply to the pay-per-view charges by the hotel to their guest for viewing the movies. This is because there is no tangible personal property transferred to the hotel guests. Instead, they merely tune the hotel's television set to the channel on which the movies are showing. Under the Sales and Use Tax Law, a taxable sale or lease requires the transfer of tangible personal property. Tax will apply only to the provider's lease of the equipment and the cassettes to the hotel, unless the provider has paid tax measured by the purchase price and leased the equipment in the same form as it acquired them. 11/24/86.

540.0340 **Records.** Copies of police reports and hospital and doctor's records, photocopied and furnished for a consideration, constitute tangible personal property and the receipts from the sale thereof are taxable. 7/11/66.

540.0346 **Sales of Advertising Space on the Internet.** The sales of advertising space on the Internet are not subject to tax where there is no transfer of tangible personal property to the purchaser of the advertisement. If the seller of the advertising space provides any tangible personal property to the purchaser, the charges for the tangible personal property would be subject to tax. 2/26/97.

540.0350 **Sales of Drawings and Blueprints.** The sale of existing drawings and blueprints in connection with the sale of a business for which a seller's permit is held is subject to tax. If the agreement provides that the drawings and blueprints will be sold for 130% of reproduction cost, tax applies to the amounts as agreed to by the parties. 10/19/90.

540.0360 **Stamps,** sales of by persons other than the United States Government, to collectors or others, not for use as postage or for resale, are subject to tax. 9/19/50.

540.0380 **Trading Stamps.** Since trading stamps are considered intangible property, the transactions of a trading stamp exchange which for a small fee exchanges one kind of stamps for another kind are not subject to tax. 6/15/60.

TANGIBLE PERSONAL PROPERTY
See Tangible and Intangible Property. Leases of, see Leases of Tangible Personal Property—In General. Lienors and consignees of, for sale, see Consignees and Lienors of Tangible Personal Property for Sale.

TAX LIENS
See Collection of Tax by Board.

545.0000 "TAX-PAID PURCHASES RESOLD"—Regulation 1701

545.0007 **Ambulance Sold by City before Use.** A city purchased three ambulances which it could not use due to an adverse court decision. Subsequently, the city sold the ambulances to an independent ambulance service.

Since the city resold the ambulances before use, the city may take a deduction for tax paid purchases resold on its return if the City is a retailer and has a

sufficient tax liability to claim a deduction. If it is unable to claim the deduction or its return, the vendor who sold the ambulances to the city could file a claim for a sales tax refund with the Board on the ground that the City resold the ambulances before using them. The vendor must then reimburse the city for sales tax reimbursement paid to the vendor. 9/30/94.

545.0010 **Brokerage Sales of Vehicles.** An automobile broker, who is a licensed dealer under section 285 of the Vehicle Code, is in the business of finding cars for customers at franchised dealers and then selling them to its customers. On occasion, dealers require the broker to pay sales tax and register the vehicle in the name of the broker.

Under this scenario, the broker may take a "tax-paid purchase resold" deduction if it makes no use of the vehicle prior to selling it to its customer. 11/25/91.

545.0012 **Chemical Toilets.** A lease of a chemical toilet is always a taxable continuing sale and purchase, and the lessor may not avoid this by paying tax or tax reimbursement on purchase price. If the lessor does pay tax or tax reimbursement on purchase price and leases the chemical toilets without making any other use of them, the lessor may take a tax-paid resold deduction. 7/19/96.

545.0013 **Claimant as Successor in Interest.** A group of entities were participants in an oil drilling operation. One of the participants, A, was the operator of this joint drilling operation. Equipment was purchased from out-of-state suppliers on which A paid the use tax. This tax and other operating costs were passed on to the participants prorated based on their respective interest in the operation.

B, not a retailer, became the successor in interest to A, a retailer. A substantial amount of the equipment was never used and was later sold at an auction. B does not qualify to obtain a refund for tax-paid purchases resold since B is not a retailer and, pursuant to Regulation 1701, the person claiming the refund must be a retailer.

B may be the successor in interest of an agent for the participants in the drilling operation for other purposes. However, that fact does not cause it to have the ability to replace A as a retailer in the state of California. A person may do by agent any act which he might do himself. Thus, an agent is limited to acts which its principal might otherwise do. In order to qualify for the refund, the person claiming the refund must be a retailer. If other participants could qualify for a refund on their own as retailers, then B could act on their behalf and claim a refund. If only a portion of the participants qualify as retailers, then only the pro-rata portion of the credit may be refunded. 7/20/93.

545.0018 **Equipment Resold Prior to Use.** A manufacturer who holds a seller's permit purchases equipment to be used in its manufacturing operations. Sales tax reimbursement was paid to the vendor with respect to the equipment. The manufacturer intends, prior to any functional use, to resell the equipment to a California lessor who holds a seller's permit. The lessor will lease the equipment back to the manufacturer.

"TAX-PAID PURCHASES RESOLD" (Contd.)

The equipment has been installed and is currently undergoing characterization (defining each machine's processing capabilities) and final acceptance testing. This shakedown/testing process is necessary to assure proper installation and operability to the manufacturer's specifications. The equipment cannot be used for production purposes until characterization and acceptance are completed.

The manufacturer plans to report tax on the transaction and collect sales tax reimbursement from the lessor.

Since no functional use of the equipment has yet occurred, the manufacturer may claim a tax-paid purchases resold deduction on its return filed for the period in which the equipment is resold. (Regulation 1701). 10/29/90.

545.0019 **Hospital Charges To Patients.** Charges to patients for items of tangible personal property which either are not "administered" or for which a separate administration charge is made constitute retail sales. This is the case whether the payments made are based on the specific amount of service or quantity of property provided or a "flat rate" based on a pre-approved schedule of services (e.g., a per capita rate, a per diem rate, etc.).

In instances where the hospital provides administration of property and no separate charge is made, the hospital is the consumer.

If the hospital maintains a tax paid inventory, a tax-paid purchases resold deduction is allowable in cases where the hospital makes a separate charge for nonadministered items or makes a separate charge for administration of administered items.

In those instances where billings to insurance companies are subject to a "contract allowance" whereby it is understood that the amount paid will be less than the amount billed, the unpaid amount is a discount to be taken at the time of the transaction, not a bad debt to be taken later. 5/23/88.

545.0019.550 **Mandatory Warranty.** A taxpayer who repairs customers' tape drives under mandatory warranties purchases spare parts tax-paid. When the taxpayer receives a defective tape drive from a customer, it may repair and return the identical drive to the customer or may send the customer a replacement drive. When a replacement drive is sent, the taxpayer will repair the defective drive and place it in its inventory for future use.

While the taxpayer may take a tax-paid purchases resold deduction with respect to the property purchased tax-paid and incorporated during a mandatory warranty repair, it may only do so with respect to the property incorporated during the current repair. With respect to items returned to the taxpayer and repaired more than once, the taxpayer may take a tax-paid purchases resold deduction only with respect to the purchase price of tax-paid property incorporated during the current repair session. 11/19/97. (M99–1).

545.0019.775 **Property Resold in Taxable or Nontaxable Transaction.** Taxpayers are permitted to take a tax-paid purchases resold deduction, if otherwise appropriate, notwithstanding the fact that the specific property as to which sales tax reimbursement or use tax was paid is not sold in a taxable retail

"TAX-PAID PURCHASES RESOLD" (Contd.)

sale, so long as it is resold without use. The sole criteria is that the taxpayer must have some taxable measure whether sales tax or self-accrued use tax, or otherwise, against which a deduction may be taken. A net refund is not permitted.

If a taxpayer is unable to take the tax-paid purchases resold deduction, the amount is subject to refund to the taxpayer's vendor by way of a claim of refund by the vendor, if the sale to the taxpayer is treated as a sales tax transaction by the vendor, or by way of a claim for refund by the taxpayer, if the taxpayer self-reported use tax on the acquisition of the property. 6/24/96.

545.0020 **Rate of Tax, Change in.** Contractor purchasing fixtures tax-paid during 2½ percent rate but installing them (selling them) during 3 percent rate must pay tax on sales price at 3 percent, being entitled to credit for tax paid on the purchase of only 2½ percent. 6/22/50.

545.0040 **Rental Use of Property.** The leasing of equipment by a vendee after original tax-paid purchase, constitutes a use of such property and precludes the allowance of a credit for tax-paid purchases resold upon a subsequent sale of the property by the vendee to the lessee. 4/20/55.

545.0048 **Sales from Inventory of Spare and Replacement Parts.** A manufacturer maintains a tax paid inventory of spare and replacement parts. The manufacturer is allowed to take a "tax paid purchase resold" deduction when such spare and replacement parts are sold. Spare and replacement parts in the manufacturer's stores inventory are not considered to be in "standby service" as set forth under Regulation 1701(c) which precludes a tax paid purchase resold deduction from being taken. 10/20/83.

545.0052 **Sales From Spare Parts Inventory.** An airline maintains a tax paid spare parts inventory from which sales are regularly made. In this situation, the spare parts have not been committed to "standby service" as set forth under Regulation 1701(c) and a deduction for "tax paid purchases resold" is allowable. 5/2/78.

545.0060 **Stand-By—Fuel Oil.** Fuel Oil purchased either to be used as an alternative to natural gas during times of increased demand for natural gas or to be resold if not so used is not used for stand-by purposes as contemplated by Regulation 1701. Accordingly, a deduction for tax-paid purchases resold is available if the fuel subsequently is sold because a sufficient supply of the fuel oil is on hand. 8/2/89.

545.0070 **Tax Paid Purchases Resold Deduction Exceeds Tax Liability.** Where the taxpayer's tax paid purchases resold deduction would exceed its tax liability, the deduction is limited to the amount of the taxpayer's tax liability under Regulation 1701. In this case, the taxpayer would be required to request its vendors to file claims for refund, since a refund is restricted to the person who paid the tax to the Board. Any refund paid to the vendors in this type of situation would be conditioned upon payment by the vendor to the person who paid the tax reimbursement to the vendor. 2/2/82.

"TAX-PAID PURCHASES RESOLD" (Contd.)

545.0200 **Transfers By Co-Owner.** Transfer of property to an out-of-state project by a co-owner of the project is not a sale. Therefore, the transferor is not entitled to take a tax paid purchase resold deduction. 5/21/71.

TAX PAID TO OTHER JURISDICTIONS
Credit for, see Use of Property in State and Use Tax Generally.

550.0000 TAXABLE SALES OF FOOD PRODUCTS—Regulation 1603
See also Charitable Organizations; Food Products; Hospitals, Institutions and Homes for the Care of Persons; Vending Machine Operators. "Free meals", see also Gifts, Marketing Aids, Premiums and Prizes; Nonprofit Organizations. Summer camps, see also Miscellaneous Service Enterprises.

(a) IN GENERAL—FACILITIES FOR CONSUMPTION

550.0020 **Admission Charge.** A donation requested of persons entering a place is not an "admission charge" within the meaning of paragraph (c)(2)(C) of Regulation 1603 as amended December 10, 1969, provided the donation is totally voluntary and no restriction whatsoever is placed on the entrance of persons not making a donation. The facts surrounding the request for the donation must be such that it is obvious that admittance is not restricted to those making the donation. A set amount for the donation, a turnstile or other restrictive device that must be passed through, or an attendant requesting the donation at the door will be evidence that the charge is not voluntary and all must pay or would reasonably believe they are required to pay. 1/27/70.

550.0022 **Admission Charge.** Where a fee for the use of facilities is charged to the persons in automobiles but not to pedestrians, such fee is not considered an admission charge. Accordingly, neither Lake Casitas nor Lake Cachuma has an admission charge for purposes of Regulation 1603. 9/10/70.

550.0030 **Admission Charge.** Gross receipts derived from the sale of food products which "are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments," are not exempt from tax under Section 6359. "A place the entrance to which is subject to an admission charge" does not include a place which has a policy of permitting persons to enter without payment of the admission charge for the purpose of purchasing exempt food products. 5/24/84.

550.0040 **Airlines.** Prepared food sold to airlines is exempt from sales tax as food for human consumption since the food is not served by the supplier. The airlines are considered the consumers of all items furnished to their passengers where no separate charge is stated. 10/22/64.

550.0050 **Amusement Parks.** An amusement park is made up of an arcade area, miniature golf courses, water slides, and a baseball batting range. Although the entire park is fenced in, there is no admission charge. Once in the park, one can take advantage of the various attractions for a fee. The amusement park operator has two eating facilities at the park. One is the main arcade area which has inside

tables and chairs located right outside of the arcade area. In addition, there is a ''Captain Kids'' area which has inside tables and chairs and also tables and chairs right outside the area. No one comes to the park for the express purpose of buying food to take out.

Generally, it must be shown with some certainty that the benches, tables, and chairs are provided for the purpose of consumption of food. From the above description, it appears that the tables and chairs are provided for the purpose of eating the food bought at the park. They are in close proximity to the food sales operations. There is a rational connection between the food-selling operations and the tables and chairs which would constitute ''facilities'' within the meaning of Regulation 1603(f). Accordingly, sales of food within the park are taxable even if the patrons buy food at the stands and then take it to other areas of the park to seat. 11/17/94.

550.0062 **Box Lunches.** A taxpayer delivers cold sandwiches and salads in plastic boxes, bags or paper boxes along with a cookie. Alternatively, the same foods may be delivered on disposable platters. Disposable napkins, plates, and utensils are also furnished. No service other than unpacking the boxes and placing the food on a side table is provided. Tax does not apply because the taxpayer is neither serving the meals nor providing food at its own facilities. If the taxpayer also furnishes carbonated beverages, tax applies to the sale of the beverages.

The taxpayer also packages and delivers cold breakfast breads and pastries, fresh fruit or fruit salad, and hot coffee, tea and cocoa. The hot drinks are delivered in thermal containers which are later retrieved. Tax does not apply for the same reasons as described above.

When the taxpayer delivers cold finger sandwiches and cold hors d'oeuvres in the same manner as above, tax does not apply for the same reason.

The taxpayer also sells hot foods such as lasagna or chicken accompanied by vegetables and potatoes in thermal containers. The hot items are put on a side table and kept warm by using chafing dishes. Bread, cold salads and desserts are also provided. Sales of hot foods and combinations of hot and cold foods are taxable. Therefore, the entire charge is subject to tax. 12/6/93.

550.0064 **Candy—80/80 sale.** A retailer operates a franchised restaurant where candy is sold. The area in which candy is displayed for sale is separated from the area containing tables and booths by an archway. The cash register for the restaurant is in the candy area. Customers of the restaurant must pass through the candy area, past the displayed candy, to reach the cash register and the exit.

In the above business layout, the candy department is not a separate business. The entrance and exit are the same as that used by restaurant patrons and the sales are rung up by the same cashier at the same register.

Candy is defined as a food product under Regulation 1602(a)(1). Regulation 1603(c)(3) is concerned primarily with sales of cold ''food product'' to go. The statute does not make any distinction as to what type of ''food product'' to go is sold. The candy is in a form suitable for consumption on the premises, i.e., no

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preparation is needed to render it ready to eat. It is immaterial that the candy may not be specifically sold for consumption on premises, or that it is never served to the customer at tables or booths. As such, candy sales are included in the application of the 80/80 rule (Regulation 1603(c)(3)). 5/31/90.

(See Regulation 1603 for candy sold in quantities of one pound or greater.)

550.0070 **Conference Center Rentals.** A company has a conference center which it rents to individuals or companies to hold seminars/conferences. At the conferences, meals are optional and available at a separate charge.

Assuming that the patrons pay the same rental rate whether or not meals are purchased, charges for rental of its conference center are not included in the gross receipts from the sales of the meals. 4/7/92.

550.0076 **Cruise Ships.** A taxpayer operates a cruise ship on Lake Tahoe. All cruises begin and end at an out-of-state point approximately four miles from the California border. The cruise routes are primarily inside this state, but the ship never lands or docks at a California location. While some cruises include meals, the ship's bar serves beverages on all cruises. The lump-sum charge for the cruise usually entitles the customer to one or two drinks plus a meal if one is offered. Additional drinks can be purchased at any time for a separate charge.

Based on the above facts, the following tax application applies to the taxpayer's operation:

(1) The taxpayer is a ''carrier'' under Regulation 1620.2. While the purpose of the cruise may be entertainment rather than transportation, the taxpayer does transport people by vessel for compensation and therefore comes within the definition.

(2) Beverages sold at the ship's bar and during meals are exempt from tax. ''Trans-state trips'' do not provide sufficient ''nexus'' to permit taxation. While the cruises all begin and end at one point in another state, the cruises are trans-state trips and the sales of beverages are therefore exempt.

(3) The meals are also exempt. While the regulation does not mention meals, for nexus purposes there is no reasonable distinction between sales of beverages and sales of meals. 10/29/85.

550.0085 **80/80 Rule—Juice Bar.** The taxpayer operates a juice bar, where fruit juices, ice cream and yogurt are sold. The business is located within a food court inside a shopping mall. In addition to the juice bar, taxpayer operates three other units in the food court which sell hamburgers, hot soup, and hot and cold oriental food. All four of the units operate under one seller's permit. There is a common seating area within the food court, which customers may use for consuming the food purchased. All of the juice bar products are served in containers suitable for take-out. The juice bar is not subject to the allocation of rent for the common seating area, although other tenants bear their prorated share.

Because the taxpayer operates four units under one permit within the food court, the activities of all four units combined must be taken into consideration. One hundred percent of the taxpayer's gross receipts is from the sale of food

products. In addition, the taxpayer makes sales of meals, sales of food products for consumption at seating facilities which the taxpayer provides, and sales of hot prepared food products. The combined sales of meals and hot prepared foods of the other three units (excluding the juice bar) equal 91 percent of gross receipts. Since this amount is greater than 80 percent, all sales at the juice bar are subject to the sales tax. This is true even if the taxpayer does not provide any seating facilities since the 80/80 rule was already met. 1/13/94.

(Note change to section 6359, operative 4/1/96, re 80/80 rule)

550.0090 **Espresso Cart.** A taxpayer operates an espresso cart inside the lobby of an office building. No tables or chairs are provided and items are served in disposable glasses, plates, or trays. Products sold include pastries, hot drinks (coffee & tea), cold juices, cold sandwiches and salads.

Since no tables or chairs are provided for the consumption of the food products and items are served in disposable containers, sales of the items mentioned above are exempt from the tax. However, if hot drinks (coffee & tea) are sold for a lump sum price with other cold food products—e.g., coffee and pastry for one price—the total sale price is taxable. (Regulation 1603(e).) 2/10/93.

550.0095 **General Purpose Room.** An operator of an espresso cart has a contract with a student organization of a college to operate an expresso cart in its student union. The cart will be located in the student union's general purpose room. The students use the room for studying and gathering and they have to bring their own food and drink into the room. The sales by the cart operator are not exempt as student meals pursuant to Regulation 1603(j)(2)(A).

The cart operator will be selling food in a form suitable for consumption in a room where there is a reasonable relationship between the presence of the cart and the use of the tables and chairs in the room for consumption of the cart operator's products. One of the current uses of the room is for consumption of food that the students bring in themselves. Therefore, the use of the room to consume the cart operator's product is not fortuitous but an extension of a current use of the room. The room, tables, and chairs are supplied by the entity with which the cart operator is contracting and therefore its sales are subject to tax pursuant to Regulation 1603(f). 1/17/95.

550.0100 **Farm Laborers in the Field.** Lunches provided laborers in the field, where no conventional eating facilities are provided but where the meals are packed in containers, served where the laborers are working, and dished out on paper plates with plastic utensils which are discarded when the meals have been consumed, are not taxable even though food items constituting meals are involved. Such meals are not taxable provided no facilities exist and the items are not consumed on the retailer's premises. 6/6/62.

550.0103 **Food Served from Returnable Trays.** In the interpretation of Regulation 1603(f), a problem arises when multiple servings of cold food are delivered on a returnable tray. The following are four situations which might arise:

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(1) The food is on a large returnable tray and is in a single bulk quantity. For example, a wedding cake may be delivered on a tray.

(2) The food is on a large returnable tray, but the food has been prepared to be served in individual portions, as, for example, a wedding cake is sliced into individual portions.

(3) The food is on a large returnable tray but has been prepared to be eaten as individual servings as, for example, a tray of sandwiches.

(4) Each individual serving is in its own returnable container and is intended to be eaten from the container.

Situations (1), (2), and (3) are nontaxable, but (4) is a taxable transaction. 2/25/94.

550.0103.175 **Food and Wine Tasting Event.** Every year on two consecutive weekends, a wine association has one annual fund raising event to raise money to promote the association's winery area. People buy a ticket which entitles them to visit all wineries for a weekend. Each winery features special wines and food pairings and activities related to learning about wine. All food and wine tasting and other costs for the event are donated by wineries, but each winery is given an amount from the association to partially cover its costs. Ticket holders do not pay for anything except their tickets.

The association provides purchasers of a ticket with food and wine. The association is the retailer of the food and wine it serves at its events, and it owes sales tax measured by the sales price of the ticket. 5/7/96.

550.0104 **Form Suitable for Consumption On Premises.** For purposes of Regulation 1603, food sold in a ''form suitable for immediate consumption'' on the seller's premises includes a pint (or any other size smaller than a quart) of cole slaw and ice cream. Food products that require further processing are not in a form ''suitable for immediate consumption.'' For example, barbecue sauce in an 18 ounce bottle purchased ''to go'' is a food product requiring further processing. 3/27/85.

550.0106 **Fund Raising Event.** A public television station sponsors a fund raising event in which attendees at these events pay an admission charge. The television station arranges for vendors to bring in their various food products for attendees to sample. In exchange for donating their food products, the vendors receive print and broadcasting promotion. Volunteers of the television station are responsible for taking money at the door, assisting in cleanup, and helping vendors present and serve their products.

Under this scenario, the television station is the seller of the food and beverages since the servers were primarily television station volunteers. On the other hand, if the vendors were contracted to supply and serve the food, the vendors would be the sellers and the consideration would be the value of the print and broadcast promotion provided to them and the space provided at the event to them to promote their products. 5/2/88.

TAXABLE SALES, ETC. (Contd.)

550.0110 **Grocery Store Located Inside Area Subject to Admission Charge.** A grocery store is located within a resort area, entrance to which is subject to an admission charge. Limited term courtesy passes are issued so that persons can patronize retail facilities, but not utilize the recreational facilities. The grocery store is not regarded as a place to which admission is charged for purposes of applying tax to sales of food. 1/22/75; 5/29/96.

550.0120 **Ice Cream Cones.** Ice cream cones sold where they would not normally be consumed on the premises are tax exempt. 8/2/63.

550.0125 **Kiosks.** Sales of coffee and espresso drinks are made from an independently owned kiosk which is located within the lobby area of a major corporate headquarters. There is no seating provided. Drinks are to-go in paper cups. The customers may go into the company cafeteria to eat, or may take the drinks to their work stations.

Under these specific facts, the company cafeteria which is accessible from the lobby, does not constitute ''facilities'' of the kiosk. The fact that some customers may choose to use those tables and chairs for consumption of drinks purchased from the kiosk does not make it ''facilities'' of the kiosk. 7/18/95.

550.0128 **Location-by-Location Basis—80/80 Rule.** When the seller does not elect to separately account for sales of food products as specified in section 6359(b), the 80/80 rule is applied on a location-by-location basis. That is, one location of a food retail chain might be covered by the 80/80 rule while another might not. If a location falls within this rule, then that location must pay sales tax on all retail sales of food products sold in a form suitable for consumption even if these products are sold to go and actually eaten off the premises. 6/6/97.

550.0130 **Meals and Beverages Included in the Price of a Cruise.** An operator conducts day cruises on his boat within the California territorial waters. Customers pay a lump-sum charge which on a day cruise includes a cruise with one complimentary beverage. On a dinner cruise, the lump-sum charge includes a cruise, dinner and the customer's choice of beverage in unlimited quantity.

On a day cruise, the complimentary beverages are used incidentally in providing the day cruise service and the operator would be deemed the consumer of those beverages. On a dinner cruise, as in a day cruise, there is no tax due with respect to the portion of the charge allocable to the cruise. Tax, however, is due with respect to the charge allocable to the meal and beverage portion of the total charge. 1/24/84.

550.0155 **Opening Charge.** An ''opening charge'' is made to customers for a catered event to cover the cost of turning on the power, turning on the air conditioning, opening the parking garage, and furnishing a parking attendant and security guard during days in which the club would otherwise be closed. The ''opening charge'' is an additional charge for the sale of the catered meals and is taxable. 12/14/90.

550.0160 **Soft Drink and Sandwich is a Meal.** A soft drink and sandwich when sold together constitute a meal. 9/29/76.

TAXABLE SALES, ETC. (Contd.)

550.0180 **Paper Cups in Plastic Holders, Crockery Mugs, and Counters, as Facilities.**

(1) The tax applies with respect to sales of fruit juices which are served in paper cups contained, however, in plastic holders.

(2) The tax applies to receipts from sales of coffee or tea in crockery mugs.

(3) The tax applies to sales of sandwiches, doughnuts, or other food products for the consumption of which the customer uses the counter or any other facilities furnished by the seller.

In *Treasure Island Catering Company* v. *State Board of Equalization,* 19 Cal.2d 181, the sales held exempt were those where the food was wrapped in a paper napkin and handed to the purchaser over a ledge or shelf. The sale of frankfurter and hamburger sandwiches were the only sales involved, tax having been paid in connection with the sale of the beverages. It was also held that the ledge did not constitute a ''counter,'' under the meaning of Section 6359, since the ledges were not intended to be used as counters due to the fact that a continued or general utilization of the ledges for such purposes would have interfered with the accessibility to plaintiff's foods by prospective customers.

The tax does not apply with respect to sales of sandwiches or doughnuts which are handed to customers and taken away for consumption or consumed without the use of the seller's ''counter,'' no tableware or other facilities being furnished. 2/13/51.

550.0182 **Park Tables and Benches.** A taxpayer operates a food concession stand in a public park. The closest park benches are ¼ mile away from the concession stand and the contract with the park department is silent regarding the benches.

Section 6359(d)(2) requires that there be some rational connection in demonstrating that the tables and chairs are provided for purposes of the consumption of concession stand's food. This may be shown by the proximity of the tables to the concessionaire, the fact that the tables and chairs are in the same room as the concessionaire, the percentage of persons using the tables and chair for purposes other than eating meals, and the fact that the concessionaire services the tables by keeping them clean.

Since the tables are some distance from the concession stand and are available for general use, they are not considered as facilities provided by taxpayer even though customer may use the facilities. 3/22/91.

550.0185 **Pints, Quarts and Half-Gallons of Ice Cream.** For the purpose of the 80/80 rule, items sold in a quantity of less than a quart (e.g., a pint or a cup) are considered ''furnished in a form suitable for consumption on the seller's premises'' even though these products are sold on a ''take-out'' or ''to go'' basis. This is a standard rule applicable to many items including, but not limited to, ice cream, milk, yogurt, and salads. As such, sales of a pint of ice cream on a ''to go'' basis are subject to tax. 8/22/90.

TAXABLE SALES, ETC. (Contd.)

550.0190 **Prison Inmates.** State prisons are not considered ''institutions'' for the purpose of exemption from sales tax for sales of meals to ''institutions'' pursuant to Regulation 1603 (m). Accordingly, sales of meals to prison inmates are subject to tax. 1/14/93.

550.0195 **Restaurant Sales on Separate Register—80/80 Rule.** A business operates a fast food restaurant and also sells fresh fruit smoothies, which are nonalcoholic, noncarbonated fruit juice products sold on a ''to-go'' basis. Sales for these two operations are rung up on separate cash registers. Since the business equipment and employees operate out of the same business location and both are owned by the same restaurant company, the juice smoothies sales must be considered together with the meal sales to determine whether the 80/80 rule applies. If the fast food operations do not bring the smoothies sales within the 80/80 rule, the sale of the ''smoothies'' are exempt from tax when sold on a ''take out'' or ''to-go'' basis. If the business comes within the 80/80 rule and the company elects to separately account for sales of the ''smoothies,'' the gross receipts from sales of the ''smoothies'' sold on a ''take out'' or ''to-go'' basis are exempt from tax as long as the separate accounting is fully documented in the company's records. 4/22/98. (M99–2).

550.0200 **Room Rental.** Where a club operating a clubhouse and allowing other organizations to use the facilities, charges an organization a fixed amount per capita for a dinner, no part of such charge may be allocated to clubhouse rental and regarded as exempt. The entire charge for meals is subject to tax. 1/10/55.

550.0240 **Room Rental.** A separately stated rental charge for the use of restaurant facilities as part of meal service should be regarded as taxable gross receipts where the taxpayer maintains the facilities primarily for the sale of meals or other food items. 12/3/64.

550.0245 **Room Rental.** When there is a room rental charge in conjunction with the sale of a meal and the only use of the room is to serve the meal, the entire charge (room and meal) is subject to tax whether or not separately stated. When a daily room rental charge is made and a meal is served at some point during the day but other uses of the room are made, the separately stated room rental charge is not subject to tax and the charge for the meal is subject to tax. 6/19/81.

550.0260 **Room Rental.** Separately stated charges for rental of real property are not deductible from gross receipts from the sale of meals where payment for the use of the facilities is required in order to obtain the meals and is a necessary part of the meal service. 6/28/65.

550.0265 **Sales by Food Shop.** A company operates a restaurant located on one street and a food shop located around the corner. The only connection between the two is a door into the back kitchen area. The two establishments should not be treated together for purposes of determining whether the ''80/80 Rule'' is required to be applied. This opinion is based on the assumption that the common kitchen area is not open to the public for access to both locations. 5/3/90.

TAXABLE SALES, ETC. (Contd.)

550.0268 **Sales of Meals Below Cost.** An employer engaged a caterer to furnish, prepare, and serve meals to its employees. The employer paid the caterer all costs plus agreed upon fees and made a charge to employees via payroll deduction for an amount approximately equivalent to 20% of its cost. There was no payment of money from the employees to the caterer. Under these circumstances, the retail sale subject to tax is the sale from the caterer to the employer. The transaction between the employer and employee is not a sale where the employer's price is substantially below the direct cost. Under these circumstances, the employer is the consumer and the sale from the caterer to the employer is not a sale for resale.

The court decisions in *Automatic Canteen Company* v. *State Board of Equalization* (1965) 238 Cal.App.2d 372 and *Szabo Food Service, Inc.* v. *State Board of Equalization* (1975) 46 Cal.App.3d 258 are not applicable. In these two cases,there was a sale by the caterer to the employees with a subsidy paid by the employer. Here, the sale is to the employer. Also, the price charged in the two cited cases was more than 50% of the cost of providing food and beverages. 2/28/80.

550.0270 **Sales of Snacks Through the Honor System.** A taxpayer requested an opinion regarding the application of sales tax to sales of snack food through the honor system.

It is assumed that by ''honor system,'' the taxpayer means a system whereby customers take snacks from a box or tray and pay for the snacks by depositing money in a container the seller provides. Snack trays share common characteristics with vending machines. Both are unattended and the transaction is completed when the customer places money in a slot or other opening. However, the plain meaning of ''vending machine'' does not include trays or nonmechanical open boxes. Thus, the snack tray is more like a snack bar or a snack cart which can also be unattended.

Snacks sold through an honor tray may be taxable, depending on where the sales take place. Sales of snacks are taxable when sold at or near a lunch room, break room, or other facility which provides tableware or provides tables, chairs, or dishes and it is contemplated that the food sold through the snack tray will normally be consumed at such facilities. 9/22/93.

550.0275 **Subsidies to Food Sellers.** A management firm operates a cafeteria at a location identified as a maternity home. Its contract provides for reimbursement of its cost plus a management fee. Meals are furnished as follows:

(1) Meals are served to residents. No charge is made for the meals either by the firm or the maternity home.

(2) Meals are served to visitors, employees, or others. These people pay for their meals.

(3) Meals are served at ''official business'' meetings or conferences with a separate charge made to the maternity home. No charge is made to the staff attending these functions.

(4) Catering sales are made to outside groups who pay for these meals.

TAXABLE SALES, ETC. (Contd.)

The furnishing of the meals to residents may be exempt if the maternity home qualifies as an ''institution'' under subdivision (m) of Regulation 1603. There is insufficient information available to determine if the maternity home qualifies as an ''institution.''

Apparently, the sales to visitors and the catering sales to outside entities covers the management firm's full cost for such sales. The ''subsidy'' is source of income for sales to the home's residents and for the meals served at staff meetings and conferences. Accordingly, it is part of the gross receipts from these sales by the caterer to the maternity home. This ''subsidy'' is distinguishable from the *Szabo* case because in *Szabo,* the sale was to the employee with a subsidy by the employer. Here, the sale is directly to the employer. There is no sale to the employee with a subsidy by the employer.

As indicated above, if the maternity home qualifies as an ''institution,'' the sales amount allocable to meals served to the residents is exempt including the pro-rata share of the subsidy. 11/10/92.

550.0300 **Use of Facilities, Payment by Retailer for.** A retailer has an informal arrangement with an industrial employer whereby he is permitted to sell pre-packaged food items for consumption at tables and chairs in its plant in return for which the retailer pays 4 percent of his gross to the employer. Sales of such food products are taxable beginning September 17, 1965. 1/14/66.

550.0301 **Wine Tasting Parties.** A charity organization hosts a wine-tasting party, making a charge for admission. The entire charge is taxable unless it can be demonstrated that the cost of the wine consumed by the attendee is insignificant in relation to the charge for admission or a separate charge is made for the wine. 11/17/75.

TAXABLE SALES, ETC. (Contd.)

(b) RESTAURANTS, HOTELS AND BOARDING HOUSES

550.0305 **80/80 Rule.** The 80/80 rule applies only to sales of food products sold in a form suitable for consumption on the seller's premises. The rule does not apply to off-premises caterers. Depending on the nature of the services the off-premises retailers are obligated to provide, rules applicable to them are found in Regulation 1603 (f) or (h). 8/20/91.

550.0320 **Averaging Five or More Guests, Manner of Determining.** Since there is no prescribed time in Regulation 1603 for computing averages, it is our opinion there is no arbitrary period of time for which an average should be computed, and that the determination should be based on the facts of the particular case, so as to arrive at a reasonable period in each case. It would be confusing and undesirable to compute the average on a flat monthly basis in all cases, since a boarding-house with only a slight fluctuation in boarders might alternate monthly from status as taxpayer to an exempt status. On the other hand an arbitrary adoption of an annual basis for computing the average, without allowance for other factors, might work to the disadvantage either of the taxpayer or of the state in cases where there has been a sudden major change in the volume of guests served at the boarding-house. We believe that if a boarding-house which normally averages three guests enlarges its facilities to serve six, it becomes subject to the tax during the first reporting period in which its averages five or more guests. On the other hand, a boarding-house which customarily averages six paying guests should be considered exempt during the first reporting period during which, as a permanent policy change due to changes in facilities or personnel, it averages less than five paying guests. A definitely longer period of time should be required to establish an average where the decrease in guests is due merely to a decrease in business, and the boarding-house continues to offer its services to five or more and thus potentially will maintain its average. 9/4/51.

550.0340 **Dinner Club Membership.** A membership entitling the member to a free meal at a given restaurant provided he purchases a meal of equal value is sold by a promoter for $12, $10 of which is retained by him and $2 turned over to the restaurant. The $10 is not subject to tax but the $2 becomes part of the restaurant owner's gross receipts. Tax should be charged by the restaurant only upon the price of the meal paid for by the member, but if the restaurant charges tax on the price of the free meal it must pay such excessive reimbursement over to the state. 11/27/62.

550.0343 **Dinner Theater.** Generally, when a taxpayer provides a nontaxable service and tangible personal property in the same retail transaction, the taxpayer will not be allowed to allocate all of its profit to the nontaxable portion of the transaction. In the case of a dinner theater offering dinner and a show for a single price, the Board ruled that the single amount should be allocated on the same basis as an American plan hotel pursuant to Regulation 1603 which says that "a reasonable segregation must be made." While a reasonable segregation is a matter of judgment, the segregation of proceeds should result in a taxable amount at least sufficient to cover the retailer's cost of food, operating expenses and a mark-up. 7/19/85.

TAXABLE SALES, ETC. (Contd.)

550.0345 **80/80 Rule—Bulk Food.** Bulk sales of individual items—e.g., a bag of doughnuts, muffins, or croissants—are in a form suitable for consumption at the facilities of the retailer. Thus, such sales are considered taxable food sales in computing the taxable percentage of food products in determining if the ''80/80 rule'' applies.

On the other hand, the sale of sandwich fillings on a to-go basis are sales of food products not suitable for consumption at the retailer's facilities. Such sales are considered not taxable in determining if the ''80/80'' rule applies to the taxpayer operations. 4/15/94.

550.0348 **Fish—You Buy, We Fry.** Taxpayer is engaged in business as a fish market with no facilities provided for customers to sit and eat the food purchased. Food is sold on a take out basis wrapped and placed in paper bags. As part of the fish market operations, taxpayer made sales of fish under the name ''you buy, we fry.'' The customer would identify a fish filet on display, taxpayer's employee would fry the fish and taxpayer would then hand deliver it to the customer. The customer would be given one sales receipt indicating a separate charge for the cold fish and another separate charge for the frying.

Pursuant to Uniform Commercial Code—Sales, section 2401(2) and Regulation 1628(b)(3)(D), the sale occurs (i.e., title passes to the purchaser) when the retailer physically delivers the property to the purchaser unless the parties had an explicit agreement to pass title at an earlier time. Since no explicit agreements existed, taxpayer sold each ''you buy, we fry'' fish item to their customers at the time they hand delivered it to them. In summary, the essence of the ''you buy, we fry'' transaction is one combined transaction—a sale of a hot prepared food product. Accordingly, as a sale of hot prepared food products, the gross receipts from such sales are subject to sales tax. 2/27/84.

550.0349 **Food Provided to Participants of a Tour Bus.** A tour bus operator offers a tour for a single lump-sum price. The tour includes transportation, lunch, and whatever else may be done during the tour (e.g., breakfast danish while on the bus). The tour bus operator pays in advance the amounts due to the bus company and to the restaurant. Under these facts, the restaurant is considered the retailer of the lunches, and tax is due on the sale of those lunches. The tour bus operator is not required to hold a seller's permit for such activities. However, if the tour bus operator were to begin selling items, it would be required to hold a seller's permit and pay use tax on such sales. An example would be if the operator were to furnish picnic meals rather than to take the participants to the restaurant for lunch. 4/28/82.

550.0350 **Guest Checks.** Tax applies to sales of guest checks to restaurants. Restaurants are the consumers of guest checks used to record the customers order, inform the cook of such order, inform the customer of the charge, and subsequently as an internal accounting control. The customers temporary possession of the check is not in lieu of a transfer of title within Section 6006(a) and is not a sale. 1/23/85.

TAXABLE SALES, ETC. (Contd.)

550.0360 **Ice Sales to Bars and Restaurants.** The buyer may give the wholesaler a resale certificate if ice is purchased by a restaurant or bar solely for sale with food or drinks. But the wholesaler should collect tax on all ice sold to places which use part of the ice for refrigeration and part for resale with food and drinks; such restaurants or bars can deduct the tax-paid purchase price of ice used for sale with food or drinks on their own sales tax returns. 5/1/64.

550.0380 **Ice and Floral Decorations.** Ice purchased tax-paid which is used to cool foods, beverages, or water and which is served to the individual customer along with such food or beverages is regarded as sold by the restaurant rather than used. Accordingly, the restaurant may take a deduction on its return for ''Tax-Paid Purchases Resold.''

Similarly, where floral decorations are purchased tax-paid and resold to a customer who has specifically requested such decorations, the restaurant is regarded as selling the flowers rather than using them and a like deduction may be taken on the return. 12/8/54.

550.0390 **Meals Sold To Residents of Retirement Complex.** Meals sold to residents of a retirement complex by a food service contractor are taxable when the minimum age of the residents is 55 and the meals are paid for by the residents as the meals are purchased. The exemption for such meals is available only in circumstances described in Regulation 1503(a)(4), where the meals are included in a flat monthly rate for board and room, the minimum age of the residents is 62, and no more than four persons under that age are in residence in any calendar quarter. 11/9/92.

550.0420 **Paper Covers.** Paper covers for glasses containing liquid used in room service of a hotel, and which are not re-usable, are regarded as being sold with the meal. Sales of such covers to persons engaged in the business of selling meals are, accordingly, sales for resale. 6/1/56.

550.0440 **Paper Place Mats.** Paper place mats sold to a restaurant for the individual use of a single patron are in the category as paper napkins and may be sold for resale purposes. 3/14/55.

550.0460 **Paper Tablecloths.** Sales of paper tablecloths to restaurants are not in the same category as paper napkins as they are used by the restaurant rather than resold with the meal. Accordingly, such sales of tablecloths are taxable. 4/13/54.

550.0480 **Parking Attendants, etc.** Charges for such services as parking attendants, security guards, and wrap attendants may be excluded from the measure of sales tax payable by retailers of meals, provided the charges for the services of these persons can be identified on the retailer's records, and provided that the retailer will certify that the personnel performing these services did not also participate in the service of food and drinks. 3/8/66.

550.0500 **Photographer's Charges.** When a retailer of meals includes the cost of having pictures taken at a banquet, etc., in the price of meals, even though separately stated, such cost may not be deducted from the retailer's gross receipts subject to tax. 1/24/52.

TAXABLE SALES, ETC. (Contd.)

550.0525 **Private Dormitories.** A privately owned dormitory which contracts with and receives payment directly from boarders for meals and food products is a retailer and must report and pay tax on the fair retail selling price of the meals and food products based on a reasonable segregation of the lump-sum charge for room and board. A caterer employed by the private dormitory to operate its food service facility is the retailer of meals and food products sold to boarders and other persons which are not provided pursuant to the contract between the private dormitory and the boarders. 3/27/72.

550.0527 **Sales by Institutions for 62 or Older.** Sales of meals and food products for human consumption, furnished or served to and consumed by residents of any home or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older are exempt from sales and use tax. However, sales of nonfood products such as carbonated beverages or beer sold by the institution are not exempt from tax unless they are part of a meal. Separate sales of any nonfood products would require the institution to obtain a seller's permit and file sales tax returns. 2/26/80.

550.0529 **Sales of Meals and Food Products.** An individual is the sole proprietor of a boarding house facility with 284 rooms and board for a flat monthly rate to permanent residents 62 years of age or older. The individual intends to form a corporation to lease approximately 25 rooms to operate a hotel for transients on the premises. The corporation would rent the rooms to the general public.

In this case, it is highly probable that persons under the age of 62 would reside on the premises, albeit on a transient or temporary basis. Section 6363.6 provides that the house or institution claiming a tax exemption for the sales of meals to its residents must serve exclusively as a principal residence for persons 62 years or older. Clearly, the requirement for exclusive residency by persons 62 years of age or older is not met when the hotel corporation subleases rooms for occupancy by persons under the age of 62 years. Consequently, the exemption from tax available under section 6363.6 would not apply to the sales of meals by the boarding house facility following the proposed transaction between the individual and the hotel corporation. 9/1/83.

550.0533 **Steak Markers.** Steak markers which are served along with the steak sold in a meal at a restaurants are considered sold along with the meal. Thus, the restaurant may purchase the markers for resale. 4/25/83.

550.0540 **Tour Operator.** A taxpayer operates a seasonal business for travel. For one type of tour, it takes possession of a hotel for a two week period. It purchases food and supervises the preparation of meals by hotel employees. It sells tour packages which include room rental, food, beverages and travel costs. During the two week period the hotel is not open to the general public. All payments by tour patrons are made to the taxpayer, and the taxpayer makes all payments to the hotel.

The taxpayer is regarded as the seller of the meals and beverages and is responsible for sales tax on those sales. 7/11/94.

TAXABLE SALES, ETC. (Contd.)

(c) "DRIVE-INS"

550.0560 **Car-Hop Service.** An establishment providing "car-hop" service is one which provides parking facilities for use of patrons in consuming food, and sales of food "to go" are not exempt. 12/9/63.

550.0580 **Doughnut Stand.** A doughnut stand located in a shopping center and providing tables and chairs for customers, although liable for tax on doughnuts sold for consumption on the premises, is not liable for tax on the sale of doughnuts sold in bulk in consumption off the premises. A shopping center parking lot is considered as provided for the general use of all patrons of the shopping center and not limited to patrons of the doughnut shop. 11/6/64.

550.0585 **Drive-In.** A donut shop has two windows from which customers may drive up or walk up and purchase donuts. Customers may also come into the shop to purchase donuts. Seventy percent of the sales are "to go". The remainder represents sales of donuts consumed on the premises.

Seven trash barrels were available outside the restaurant. Parking spaces for fifteen cars were available. Evidence supports a finding that the parking spaces available were intended primarily for customers eating inside the shop and employees. Under these facts, the donut shop is not a drive-in for purposes of Regulation 1603. 5/23/78.

550.0620 **Parking Facilities.** Parking facilities provided for general use at supermarkets and shopping centers are not sufficient to require food sold "to go" at coffee and snack bars to be subject to tax. 10/25/63.

(d) TIPS, SERVICE AND COVER CHARGES

550.0680 **Admission Charges—Theatre Restaurant.** Charges for admission to a place furnishing entertainment which are billed separately from minimum charges for meals or drinks are not subject to tax. 1/28/65.

550.0685 **All Inclusive Ticket Prices.** When admission to events is for a single ticket price which includes entertainment, food, prizes, etc., a segregation must be made on the ticket between taxable and exempt items. 5/8/92.

550.0688 **Allocation of Tips.** A lump-sum charge is made for furnishing meals, drinks, and a river cruise. An allocation of the lump-sum charge is made between meals, tax, cruise, and tips. Where service charges are mandatory on purchases of food and drinks, these charges are included in taxable gross receipts. If the taxpayer can show that a specific percentage of the sum allocated to tips is, in fact, paid to ship personnel who do not prepare and serve meals or drinks, that percentage should not be includable in taxable gross receipts. 5/11/93.

550.0695 **Banquet Tips.** To help customers plan banquets, the taxpayer employs convention coordinators and caterer coordinators. These employees meet with the customers, give them written policy information and enter into agreements for the parties or meetings, in addition to the banquets. The standard policy information and the standard agreement both state that "the suggested gratuity is

TAXABLE SALES, ETC. (Contd.)

15%" for food and beverage. Before the banquet, the parties sign a prospectus and specify, among other things, the details of the food and beverage service and the agreed upon gratuity. The prospectus, the policy information, and the standard agreement collectively constitute the contract for the banquet.

A sample of the prospectus showed that all gratuities were 15% except for one at 11.93%. The prospectus for the one exception was signed (approved) by the president of the corporation, while all the other prospectuses were signed by the coordinators.

Considering the sample, it appears that a gratuity of less than the suggested amount requires the final approval of an officer or a supervisor. While the suggested gratuity of 15% is not mandatory, the fact remains that some gratuity negotiated in advance between the taxpayer and its customers is mandatory. Customers do not have the option to enter into contracts for the sale of food and beverages, and not specify an amount for the gratuity. For sales and use tax purposes, when a retailer asks one price for the sale of merchandise, but accepts a lower price following negotiations with the buyer, the amount ultimately received remains subject to the sales or use tax. The result is not different merely because the negotiated amount is for services that are a part of the sale. Therefore, the taxpayer's gratuities are considered mandatory and subject to sales tax. 3/21/95.

550.0715 **Gratuity.** Voluntary gratuities are not taxable. A check to the customer as follows does not meet the test of voluntary. The total amount received is subject to tax:

Beverage total including tax	$XXX.XX
Optional 15% gratuity	$XXX.XX
Total	$XXX.XX *

* The above totals includes an optional 15% gratuity. You may raise, lower or eliminate this gratuity by telling your server. 8/26/96.

550.0730 **Minimum Meal Charge.** Where a food service enterprise charges a fixed amount per meal to an organization making reservations for its members, and charges an additional amount for late reductions in the number of meals to be served, the additional amount is part of the total charge for the meals actually served and is subject to tax. 3/31/76.

550.0740 **Service Charges.** Where service charges are mandatorily imposed upon the purchase of drinks, the same being intended to cover tips, such charges must be included in taxable gross receipts. 9/22/53.

550.0760 **Service Charges.** A standard amount collected by a club from its members as a service charge is not a gratuity even though the charge is paid over to employees and is not used to offset their wages. The service charge, paid as an automatic obligation of the club members, is collected as an exaction and must be included in taxable gross receipts. 9/24/65.

TAXABLE SALES, ETC. (Contd.)

550.0770 **Tips—Amount Specified by Customer.** Banquet tips were not considered part of the taxable selling price of meals when the caterer added to the price of the meals an amount specified by the customer and distributed this amount to its employees. The amount was not a charge made by the caterer but was voluntarily offered by the customer. 5/19/77.

550.0800 **Tips Which Are Not Applied to Wages.** Where a restaurant operator merely collects the tips on behalf of employees and does not apply them against the employees' minimum wages, under circumstances where the customer is not obligated to pay the tip, the amount of such tips is not part of the retailer's gross receipts from the sale of meals. 8/28/53.

(e) CATERERS

550.0809 **Cake Cutting Services.** Cutting and serving a customer-furnished wedding cake by a country club constitutes a sale, and such charges are considered taxable gross receipts. Sections 6006(d) and 6012 of the Revenue and Taxation Code. 9/14/93.

550.0809.300 **Catering Functions for Groups from the Federal Government.** A major hotel performs catering services for groups from the federal government (i.e., Air Force, Department of Defense, Red Cross). In order for the hotel's sales to such groups to be exempt, the hotel must substantiate that the purchases are official purchases of the United States (or U.S. instrumentality) and that the groups are authorized by the United States to purchase the catering from the hotel on behalf of the United States in accordance with Regulation 1614. If the caterer is unable to acquire sufficient proof that the purchases are official purchases of United States, the sales to such groups are regarded as sales to individual employees of such organizations and are properly subject to sales tax. 7/3/96.

550.0810 **Charges Made By Caterers.** All charges which a caterer bills to his client for the preparation and service of food are taxable, including the rental of hotel facilities and staff for the planning, preparation and furnishing of the food. If the caterer provides other services such as seminar rooms for meetings, optional entertainment, or any coordination staff that does not directly participate in the preparation or service of food, the charges for these services are not taxable, provided that these charges can be identified and are not customarily provided in connection with the preparation and service of food. If billed lump sum, there must be a reasonable separation between taxable and nontaxable activities provided. 3/10/93.

550.0811 **Charges Made By Caterers—Wedding Coordination.** The main purpose of a wedding reception is the preparation and furnishing of food and beverage. No deduction can be taken for any portion of the charge billed to the client for ''arranging'' or ''coordinating'' the event. 3/10/93.

TAXABLE SALES, ETC. (Contd.)

550.0818 **Cold Food On a Large Returnable Tray.** A caterer merely provides cold food on a large returnable tray in a bulk amount. Even though the food has been previously prepared to be eaten in individual servings, as in a tray of sandwiches, and although the tray is a ''facility of the retailer'' under Regulation 1603(f), the food is not considered to be furnished in a form suitable for consumption from that facility. Where the tray is brought in and deposited at the customer's premises with no further participation on the part of the caterer's employees, there is no ''serving'' within the meaning of Regulation 1603(h). Such sales are sales of cold food products exempt from tax. 9/2/94.

550.0820 **Contract, Form of.** Although a transaction between a caterer and an employer is designated in a contract between the parties as a sale of meals by the caterer for resale by the employer to his employees, the board may look through the form of the transaction to determine whether, in fact, the sale by the caterer is a sale for resale. If the substance of the transactions is found by the board to be a retail sale by the caterer, the gross receipts therefrom are subject to sales tax. 8/30/66.

550.0824 **80/80 Rule.** A caterer has gross receipts which are over 80% from the sale of food products and more than 80% of those sales are subject to tax. The caterer has no on-site eating facilities such as tables and chairs.

Regulation 1603 limits the 80/80 rule to ''restaurants, fast-food establishments, concessionaires, soda fountains, and other similar establishments.'' A caterer with no on-site eating facilities is not subject to the 80/80 rule. Thus, sales of cold food ''to go'' by the caterer are not subject to tax. (Under certain circumstances, a person who does not own on-site eating facilities is nevertheless regarded as having on-site eating facilities, e.g., when the person operates in a shopping mall that offers shared eating facilities for a number of food vendors.) 9/15/87.

550.0826 **Employer Subsidies to Caterer.** When a caterer operates a cafeteria for an employer under a contract providing that the employees will pay a designated amount for their meals and the employer will pay a subsidy, the court has ruled that the subsidy is not part of gross receipts (*Szabo* v. *SBE*). However, when the employees pay nothing for the meals and the employer pays the entire amount required by the catering contract, the payment cannot be considered a subsidy as there is nothing to which it could be attached as a subsidiary payment. The entire amount is gross receipts from the sale of meals. 10/4/83.

550.0827 **Event Planning Service.** The taxpayer is an ''event planning'' business. It is hired by customers to coordinate large functions. When an event is booked, the taxpayer obtains various caterers and restaurants that cater the food. The caterer or restaurant sends the taxpayer an invoice and the taxpayer in turn sends an invoice to the customer. The taxpayer bills the customer the same amount the caterer or the restaurant invoices it. The taxpayer's compensation is obtained from the caterer or restaurant who pays the taxpayer a certain percentage of the total cost of food and beverage. The customer makes the check payable to the taxpayer.

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Under these facts, the taxpayer is the person contracting with the customer for a sale. Therefore, the taxpayer is buying and selling for its own account and is not acting as an agent for the caterer or restaurant. Accordingly, the retail sale in this situation is the sale by the taxpayer to the customer and the taxpayer owes sales tax measured by the entire charge for catering collected from the customer. The taxpayer should issue ''resale certificates'' to the caterer or restaurant.

Furthermore, the taxpayer's event planning is a preliminary step in its contract to furnish the party supplies, meals, food and beverages for the event. In this situation, sales tax applies to the entire charge for furnishing the party supplies, meals, food, and beverages, including the charge for the taxpayer's labor in planning the event because the charge for the labor would be regarded as a charge for services that are part of the sale of tangible personal property. Such amounts are part of the taxpayer's taxable gross receipts from the sale of tangible personal property, even though such amounts are received from the caterer or restaurant. 11/28/95.

550.0827.725 **Food Catering.** A caterer contracts with various employers specifying that the caterer will provide food service and will operate executive dining facilities and cafeterias at the employers' business locations. The operations provided for a subsidy, if necessary, to guarantee the caterer an adequate return on the operation. Three locations allowed employees and others to eat without direct payment at the time of consumption of the meal. These three locations operated by a procedure whereby the caterer would receive payment directly from the employer (not the employees) at a later date. Such payment included the fees, the subsidy, if applicable for that period, and a per meal charge for the number of meals eaten or a flat fee per employee. The caterer believes that pursuant to *Szabo Food Services, Inc.* v. *State Board of Equalization* ((1975) 46 Cal.App.3d 268) the fees and subsidies received from these three locations are excluded from the taxable measure.

The caterer's reliance upon *Szabo* as being identical is misplaced. In contrast, *Szabo's* cafeteria's operated on a direct payment system wherein those eating would pay for the meal directly to cafeteria personnel. The court reasoned that ''the employees who purchased the cafeteria meals provided the only consideration for the sale of the meals.'' At the locations at issue, the caterer does not collect cash payment from the patrons. The patrons eat without paying (signing a guest check in some instances) and the caterer is paid at a later date pursuant to an agreed upon rate or formula. The caterer receives a single payment which includes consideration for the food and services as well as the fee and the subsidy. This is the difference between this case and *Szabo*. In *Szabo*, the consideration received from the employees as payment for the meals is readily calculable and easily verified as representing the only consideration which is included in gross receipts. In this case the employers, not the employees, pay the consideration which includes the payment for the meals, the fees, and the subsidies. At these three locations, all amounts received by the caterer from the employers are and must be deemed to be consideration received for meals provided and thus includable in gross receipts. 7/17/90.

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550.0828 **Food and Drink Aboard Boat Charters.** A taxpayer's operation consists of boat charters. Less than five percent of the taxpayer's revenues are derived from boat charters where no food or drinks are provided. With respect to the remaining revenues, the taxpayer enters into two types of contracts. One type provides for charges quoted on a per-guest basis which includes tax and tip. The other type of contract separately states charges for the ''yacht and crew,'' food, drinks, music, tax and tips. The ''yacht and crew'' charge includes a charge for food and beverages servers.

A significant purpose for a person entering such a charter involving the purchase of taxable food is to obtain the benefits of the yacht charter. That the point of departure and point of return are the same does not affect the analysis since tours around the bay are just as much transportation as a ferry across the bay. Charges attributable to the yacht charters are not includable in the taxpayer's taxable gross receipts. In addition, charges for optional live music are also not part of the taxpayer's gross receipts.

Whether or not they are separately stated, amounts attributable to the sale of food and beverages and for the service of food and beverages are subject to sales tax. 10/23/90.

550.0835 **Full Service Catering.** A full service catering company, in addition to food or the service of food, may provide many items, such as tents, dance floors, etc., when events are scheduled. They also provide labor to install these items and also service to install temporary lighting etc. Other items provided include video screens, entertainers, etc.

If a tent, subflooring, Astroturf, canopies, and generators and air compressors are rented to provide a customer with a temporary sheltered place in which to provide a meal, the charge for the facility is included in the taxable gross receipts from the sale of the meals. The facility is not leased to the client, but is used in connection with the sale of the meals. The taxable gross receipts also includes the labor to install the items, the temporary lighting, heating, electrical fixtures as well as the charge for the painter who paints the facility.

Tax does not apply to a charge for entertainers or for the sublease of tax-paid equipment, such as dance floors, stages, screens, garden fountains, video screens, podiums, gazebos, and p.a. systems, when the customer has specifically ordered the entertainers or equipment and they are not customarily provided in connection with the preparation and furnishing of food. 1/17/92. (Am. M98–3).

550.0838 **Hourly Employees.** Charges for hourly employees hired by a caterer are included in the caterer's gross receipts. The reference to hourly employees in Regulation 1603 (h) refers to hourly employees hired by the customer. 8/17/90.

550.0840 **Independent Contractor.** Irrespective of the conclusions stated in a written contract as to the relationship between an employer and a caterer, where the caterer purchases food, prepares and serves it (whether with its own employees or through a manager directing those on the payroll of another), and participates in the retail cash sale, the caterer is engaged in a retailing activity. The caterer is an independent contractor making taxable retail cash sales pursuant to a contract with the employer. 3/16/59.

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550.0841 **Independent Contractor.** A taxpayer enters into agreements to prepare and serve food for various wineries under three scenarios.

Scenario 1. The taxpayer charges for his services by the day. The meals are served either in a banquet room, at an owner's house, or on a passenger train. The taxpayer decides what he will serve and performs all the cooking and serving in addition to the set up and cleaning for the meal. In addition, the taxpayer educates the winery's guests by allowing them to observe him prepare the food in the kitchen while explaining its preparation.

Where a person who hires a caterer does not withhold and pay federal and state income tax and social security tax with respect to the amounts paid to the caterer, the caterer is an independent contractor, not an employee. Since the persons hiring the taxpayer do not treat him as an employee by withholding income and social security taxes, the taxpayer is a caterer as defined in Regulation 1603(h). Hence, sales tax applies to all of the charges made by the taxpayer in connection with his service of the meals.

Scenario 2. The differences between this scenario and the first one are that there is a limitation placed on the amount of cost per person and the guests pay for the meal and not the winery. If the caterer is paid by the winery, the caterer would make a sale to the winery for resale to the winery's customers. If so, the winery owes sales tax on its sales to the customers. On the other hand, if the caterer sells the meals and collects payment directly from the customers of the winery, then the caterer makes taxable retail sales to the winery's customers.

Scenario 3. The taxpayer works for five rail cars located in California, Oregon, Missouri, and Washington. The taxpayer either starts in California and stays in California, starts in California and leaves the state, starts out of state and ends in California, or starts out of state and stays out of state. Wineries fly him to his starting destinations. When the taxpayer is traveling on a California/out-of-state train, the meals are served both in California and out of state. The taxpayer cooks breakfast, lunch, and dinner. He makes beds and does some general maintenance and cleaning. The taxpayer chooses what meals will be served with the wines provided by the winery. The taxpayer charges the winery $1,423.00 ($523 for food and supplies, and $900 for his catering labor). His charges for other services, such as cleaning, making beds, and maintenance, are stated separately from the catering charges.

The separately stated charges for cleaning, making beds, and maintenance are not related to the sales of meals and are not taxable. Charges for catering, food, and supplies are retail sales. An allocation should be made for sales without the state which are not subject to tax. 8/31/95.

550.0845 **Meals and Caterers.** When charges for a sound engineer's payroll and payroll taxes, equipment rentals, and charges for music and entertainment are not provided as part of the client meal service, these items should be excluded from the measure of tax. When charges for decorating, table and chair rentals, bartender and waiter costs including payroll taxes, and cleaning and janitor costs are charges for services that are part of the sale of meals, they are subject to tax.

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Charges for decorating may be excluded from the measure of tax as an accommodation purchase when it can be demonstrated, by satisfactory evidence, that the contract for the decorating work is made by the decorator directly with the organization obtaining the meal service. Other charges such as guard service, parking, telephone calls, messenger service, etc., are excluded either as accommodation purchases or reimbursement for services that are not part of the sale of the meals.

When complete meals are served, separately stated facility rental charges will be regarded as receipts for services that are part of the sale. Payment for use of the facilities is required in order to obtain the meals and therefore the facilities are a necessary part of the meal service. The Sales and Use Tax Law provides no basis for allocating a portion of the rental charge when facilities are used for other purposes in conjunction with the sales of meals.

When less than a complete dinner is served, it is recognized that the food items are only incidentally provided and that the room charge in this instance is made for use of the facilities without regard to the meal service. Charges allocated for coffee and cake and other snacks, not part of a complete dinner meal, will be accepted as segregated provided they are equivalent to the reasonable retail value of these food items. 6/28/65.

550.0847 **Minimum Donation for Serving of Meals.** An organization's operation consists of the following transactions:

The organization prepares and delivers two meals per day to people with AIDS and AIDS-related complex. The service is free. At the time of client intake, a donation of up to $4.25 per day, which is substantially less than the cost of each meal and delivery, is asked to help offset the cost of food, but no one is turned away if they are unable to pay.

Under a contract with a hospice program, the organization provides meals for the patient at a hospice. It provides the cooks and raw food to the kitchen where all of the food is prepared and served on the premises of the hospice.

The organization has an agreement with a charity where the charity will pay $2.00 per client per day for AIDS/ARC patients in its project. This agreement simply offsets a small part of the cost for the meals.

The transfer of meals for a suggested minimum donation is regarded as a sale of the meal since such a transaction is considered to be a transfer of tangible personal property for a consideration. The donations received from such sales are included in the retailer's gross receipts and the donations are subject to tax. The gross receipt from the sale of meals also includes the amounts received for the furnishing of raw food used to prepare the meals to be sold. Accordingly, the reimbursed costs for the services of the cooks and the food as described above are included in taxable gross receipts. The $2.00 per meal received for the transfer of meals to the charity is also a sale and the gross receipts from such sales are subject to tax. 6/9/88.

TAXABLE SALES, ETC. (Contd.)

550.0848 **Preparing Food for People in their Homes.** A private chef makes a living by preparing food for people in their homes. Usually, the chef's clients have already purchased the food. However, occasionally the chef purchases the food for them and obtains reimbursement for the actual amount. The chef gets paid by the hour for his labor. The customers are billed for the chef's time for travel, shopping, cooking, and on rare occasions, serving the food. All the food is prepared and eaten by the clients in their home. The chef pays his own federal, social security, and state taxes.

A person is not an employee solely because he is hired by the hour or day. In an employment relationship, the employer withholds and pays social security and federal and state income taxes. If the employer withholds, then the Board generally considers the relationship to be an employment relationship if other aspects of the relationship are not inconsistent with such a conclusion. On the other hand, if the individuals treat the arrangement as the hiring of an independent contractor without withholding, the Board generally accepts their apparent view of the relationship. Here, since the chef pays his own federal, social security, and state taxes, he is considered an independent contractor. Therefore, the chef is a caterer under Regulation 1603(h) and all of his charges are taxable including those for reimbursement of the cost of foods. 6/25/96.

550.0850 **Rentals.** Tax applies to a caterer's entire charge, including the charge for the use of dishes, silverware, glasses, chairs, tables, champagne fountains, and other property used by the caterer in connection with the serving of meals. The caterer cannot issue a resale certificate for the purchase or leasing of such items because the caterer does not sell nor rent such items to its clients. Rather, the caterer uses such items in connection with its sale of the meals (Sales and Use Tax Regulation 1603(h)).

On the other hand, a caterer may issue a resale certificate to a rental company to lease tangible personal property which the caterer in turn subleases to its clients when the clients have specifically ordered such property and the property is not customarily provided in connection with the preparation and furnishing of food. Such property could be decorative props, such as artificial floral displays, lighting for guest speakers, sound systems, or video systems. 6/14/89.

550.0855 **Rental of Facilities.** If a caterer contracts with a facility (room, auditorium, yacht, etc.) owner for the use of the facility for the serving of food by the caterer to the caterer's client, the caterer is considered the equivalent of a restaurant serving food, as opposed to a caterer serving food in a client's facility. Therefore, such a caterer should not be considered as renting props, costumes, displays, and flowers, to the client for the event. The caterer may not purchase or lease such items for resale and may not deduct the amount of the charge for such items related to the service of the food from the caterer's taxable gross receipts. On the other hand, charges for items unrelated to the sale of tangible personal property are not part of the caterer's taxable gross receipts. For example, a charge for costumes for persons serving meals would be taxable while a charge for costumes for entertainers providing optional entertainment would not be taxable. When the facility in which the food service occurs is mobile, such as a yacht or bus, a charge for transportation is nontaxable. However, if the yacht remained

TAXABLE SALES, ETC. (Contd.)

moored and was not used for transportation, the charge for its use for food services would be taxable. 11/30/89; 10/25/90.

550.0860 **Services, Charges for.** Charges for bartenders, waitresses and cooks, hired by a caterer to cater a meal, are includable in the measure of the tax, even though these personnel were determined by the Employment Development Department to be independent contractors rather than employees. Their status as independent employees is not sufficient to exempt charges the caterer makes for their services in connection with the serving of meals. Tax applies to the entire charges made by caterers for serving meals: As long as the caterer's customers are billed for the labor, they are a part of the caterer's gross receipts. 10/17/66.

550.0870 **Special Event Charges—Caterer.** A caterer who designs, plans, and coordinates parties and special events that usually take place on a client's property asked the following questions: (The responses are based on the assumption that none of the nontaxable charges are mandatory services in order to obtain the meals).

(1) Does sales tax apply to marked up items such as decorating food buffet and entertainment sites, wait staff, site managers, and administrative personnel?

In general charges for items relating to the preparation, furnishing, and servicing of food must be included in the measure of sales tax. Charges not related to service of food, e.g., entertainment are nontaxable. The decoration of the food buffet is taxable. The decoration of entertainment sites is excludable from the measure of tax.

(2) Are the following administrative fees charged to clients subject to sales tax?

(a) Phone

(b) Freight

(c) Travel

(d) Postage

(e) Insurance

(f) Accommodations (for entertainers, staff)

(g) Temporary office equipment rental

These charges are taxable when related to sales of tangible personal property (meals). For example, charges for accommodations for staff who will serve meals are taxable.

(3) Are rental of costumes for entertainers taxable?

If this is a charge which is passed on to the client, it is not taxable. However, the costume supplier's charge to the caterer may be taxable as explained in Regulation 1660.

(4) Are prop rentals for decor taxable? These props are sometimes custom-built by the caterer and rented to client. They are returned and used again. Other times, props are rented from outside sources.

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When props are related to service of food, i.e., table decor, the caterer is regarded as the consumer and may not purchase or rent the property ex-tax for resale. The caterer is the consumer and the charge to the client is part of taxable gross receipts.

Since these transactions occur on the premises of the client, the transfer of possession and control of items unrelated to food service are regarded as rentals. With respect to props which the caterer designs and builds, they are not rented in substantially the same form as acquired and the rental charges are taxable.

When rental props are from an outside source, the caterer is subleasing to its client and rental is not subject to tax if tax has been paid to the prime lessor. However, the caterer may choose to issue a resale certificate to its lessor and pay tax on its rental charge to the client as explained in Regulation 1660.

(5) Is a charge for a one time liability insurance for a specific event which is marked up when billed to client taxable?

Since it is related to taxable sales (meals, etc.), the charge is taxable as a part of caterer's overhead cost of selling those items.

(6) Is a professional fee for designing and coordinating an event, for which the client is billed separately for materials, subject to tax?

If the fee is in connection with the sale of tangible personal property, it is taxable.

(7) Is providing consulting service to a client regarding a party or event subject to tax?

If the consulting is unrelated to any sale of tangible personal property, the charge is nontaxable.

(8) Is providing an entertainment production package which includes: entertainment, costumes, staging, sound system, lighting, seating, etc., subject to tax?

Charges for optional entertainment are not taxable. Assuming that the lighting and seating are not the same as used in connection with serving of meals, these charges also are nontaxable.

(9) Is valet parking taxable?

Valet parking is not taxable. 11/6/90; 12/12/90. (Am. 2000–1).

550.0880 **Stand-by Charges.** A caterer who serves meals from a portable kitchen to motion picture studio personnel filming on location is requested from time to time, to have his driver stand-by in case a second meal is needed. Separately stated charges for driver stand-by time occurring after the sale of the first meal are not subject to tax where charged only if the second meal is not purchased and the total charge is paid to the driver as wages for the time spent waiting, rather than any physical activity in preparing or serving the meals. 9/1/66.

550.0900 **Supervisor.** A person, who receives a fixed weekly wage for supervising the preparing and serving of meals in a dining room reserved for the use of designated personnel, owns no facilities, purchases and pays for no food,

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handles no money, and is accountable for none, has no say in the hiring, payment, or firing of persons ostensibly in his employ, and receives no subsidy, does not sell the food on his own behalf and is not subject to tax. 8/6/69.

550.0908 **Taxable Food Percentage.** A taxpayer operates a catering, restaurant, and gourmet shop at a single location. In determining whether 80% or more of the sales are taxable, all sales at the business location should be considered rather than considering sales on a department by department basis. Nevertheless, sales of food in quantities that are not suitable for consumption on the seller's premises would not be subject to tax. (e.g., bottled barbecue sauce, whole pies, quart of ice cream) 11/6/85.

550.0920 **Wages Paid by Caterer to Temporary Help.** Wages paid by a caterer for outside help to serve meals, tend bar and wash dishes are not deductible from taxable gross receipts for selling meals, even though the amount thereof is separately stated to the customer. 2/15/67.

550.0921 **Wedding Functions.** A wedding consultant/planner makes all of the arrangements necessary for a wedding. The consultant's charges and the corresponding tax application are set forth below:

(a) Wedding cakes. Charges by a caterer for the issuing of food provided by others are subject to tax under Regulation 1603(h). Therefore, charges for providing the wedding cake and the charges for the cutting and serving of cake are subject to tax.

(b) Accommodations. When the accommodation charges relate to sales of tangible personal property, they are subject to tax. Thus, charges for accommodation of staff who will serve meals must be included in the measure of tax for sales of those meals.

(c) Musicians/entertainers. Assuming these performers are not used in connection with the sale of any tangible personal property nor are they used in connection with the service of food, amounts paid for these performers are not subject to tax.

(d) Set-Up/tear-down labor. If these amounts are connected to the sale of the tangible personal property or the service of the meals, charges for set-up and tear-down are included in the measure of tax. 3/22/94.

(f) SOCIAL CLUBS, FRATERNAL AND RELIGIOUS ORGANIZATIONS

550.0925 **Admission Charge.** The exemption for meals sold by religious organizations (Regulation 1603 (l)) is not negated because the meals are sold for consumption from within a place the entrance to which is subject to an admission charge (Regulation 1603(d)). 5/8/92.

550.0940 **Dues.** Amounts paid to meet a minimum food and drink requirement imposed on country club members are additional costs of membership rather than taxable additional amounts paid for food and drink because the purpose of the requirement is to keep the bar and restaurant at a break-even level in lieu of

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making up a deficit from other dues or club accounts, and thus the members have a social reason for paying the minimum even if the tangible personal property is not consumed. 7/22/69.

550.0960 **Frequency.** When the organization meets once a week on a regularly scheduled basis, it will be considered to be meeting once a week despite the fact that a meeting is occasionally not held because of a holiday or other reason. There is no requirement that there be at least 52 occasions on which meals, food and drink are furnished. 1/5/70.

550.0980 **Frequency.** A club or fraternal organization which furnishes meals less frequently than once a week is a consumer and therefore may not give resale certificates to the caterer. 11/5/52.

550.1000 **Guests.** When meals, food and drink are furnished by a club or organization to a guest of a member, and the member rather than the guest is required to pay all charges incurred by the guest, and the guest cannot gain access except by invitation, the meals, food and drink are to be considered furnished to the member. 1/5/70.

550.1016 **Meal Sales At Church Retreat.** A religious organization operates a retreat for its members and in conjunction with the retreat provides meals and lodging. The meals are served in a dining hall operated by the organization which is open only to church members attending the retreat. The funds derived from the sale of the meals are used to offset the cost of operating the dining hall. If excess funds exist, they are used for other expenses related to the maintenance of the retreat.

The exemption provided under section 6363.5 is limited to meals served at ''fund raising'' functions. The church operates the dining hall to furnish meals to its members assembled there as retreatants attending services and receiving religious training and not as a ''fund raising'' function. Therefore, the gross receipts from the sales of these meals are not exempt from sales tax. 11/17/83.

550.1020 **Minimum Purchase Requirement for Members.** Country clubs and other organizations sometimes establish minimum food and drink purchase requirements for their members. If a member's purchases are less than the minimum, he is required to remit the deficiency. Such payments are additional membership fees and are not payments for tangible personal property. Accordingly, they are not includable in taxable gross receipts from sales of food and drink by the club. 7/22/69.

550.1036 **Religious Organization.** One of the conditions that must be met in order for sales of meals to be exempt from tax pursuant to Regulation 1603(l) is that the purpose in furnishing or serving the meals as food products is to obtain revenue for the functions and activities of the organization. For meals sold at religious camps, the failure to meet the above requirement is why the meals are not exempt under Regulation 1603(l).

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The Board's experience with such camps is that the meals would be served even if the revenue from the meals did not fully cover their cost. The camp participants must be fed, and it is usually impossible, or at least impractical, for them to obtain meals elsewhere while attending camp. In no sense are the meals served for the specific purpose of raising revenue, as is required by the express language of the regulation. The meals served in camps are a continuing necessity of camp life and the revenue usually covers the cost of meals, but such meals would, in all likelihood, be served even if a loss were incurred.

Furthermore, the language ''social or other gathering'' in Regulation 1603(l) applies to activities such as church luncheons or dinners conducted for the express purpose of fund raising. It does not include activities within which the meals are an incidental part of continuing operations which have as their purpose religious education and which would be held even if no financial profit were expected. 9/21/71.

550.1040 **Religious Organizations.** Meals served by a church-operated cafe which is open to the public on a regular, continuing basis are not exempt from tax under Section 6363.5. 2/28/63.

550.1041 **Religious Organization.** A church plans to open and operate a cafeteria which will serve vegetarian lunches. The cafeteria will be located on the church's premises. The purpose of providing cafeteria service is to promote the congregation's spiritual needs, to work in unity with fellow members, and to provide a place for social gatherings, meetings for members, and fund raising. The cafeteria will be staffed by volunteers and all receipts from the sales of lunches will be used for the operation and maintenance of the church facilities. It is intended that the cafeteria's use will be restricted to members of the congregation. However, it could be used for senior citizen events or other community social services.

If the church qualifies as an organization, the property of which is exempt pursuant to subdivision (f) of section 3 of article XIII of California's State Constitution, the sales of vegetarian lunches for consumption on its premises will not be taxable during any period which it serves meals in conjunction with gatherings and events conducted by the church on behalf of the congregation.

However, if the church intends to open the cafeteria to the public on a regular basis (senior citizen events or other community social services), sales by the cafeteria during these periods will not be eligible for the exemption provided by section 6363.5, regardless of the fact that the receipts will be used for the church's operation and maintenance. 11/9/95.

550.1042 **Religious Organizations.** A religious organization sells coffee, sodas, ''Snapple,'' muffins, bagels, and other snacks in conjunction with its services which are primarily held on Sundays and Tuesdays. Tables and chairs are provided in the foyer of the facility to provide ministry attendees an opportunity to sit and eat. This seating arrangement is designed to allow ministry attendees to build friendship and experience fellowship within the church. The proceeds from these sales are used to cover the cost of the food and beverages with any excess placed in the ministry's general fund.

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The property of the organization is exempt pursuant to Subdivision (f) of section 3 of Article XIII of California's State Constitution. Thus, its sales of meals and food products at these social gatherings are exempt from sales tax under section 6363.5 provided the purpose of the sales is to raise revenues which are used for carrying on the functions of the organization.

However, carbonated beverages and carbonated or effervescent bottled waters do not qualify as food products. Thus, sales of these items are subject to sales tax. Sales of ''Snapple'' products which are flavored ice teas or noncarbonated flavored waters are not taxable. 8/21/95.

550.1043 **Religious Organizations.** Religious organizations are the retailers of meals and, if all the conditions set forth under Regulation 1603 subdivision (l) are met, sales tax does not apply to a religious organization's sales of meals at fund raising banquets. The person furnishing the meals is selling the meals for resale to the religious organizations and the religious organizations should issue resale certificates to the person furnishing the meals even though the religious organizations may not be required to hold seller's permits. It is not necessary for a religious organization's personnel to physically serve the food for the sales tax exemption to apply. However, if a religious organization does not charge its invitees, or charges them only at cost, the purpose of serving the meals is not to raise revenue and the sales tax exemption in Regulation 1603 subdivision (l) does not apply. 3/22/85.

550.1060 **Religious Organizations.** Meals sold by a caterer to a religious organization and served by the religious organization for fund-raising purposes are exempt from sales tax. 4/23/70.

550.1070 **Religious Organizations—"Fund Raising Function."** A religious organization operates a retreat for its members and furnishes meals and lodging at the retreat for the members who pay for these items. The funds derived from the sale of meals are used to offset the cost of operating the dining hall. If excess funds exist, they are used for other expenses related to the maintenance of the retreat. Under the above circumstances, sales of the meals are not exempt from sales tax as provided for under Regulation 1603(l) since the religious organization did not serve the meals in the context of a ''fund raising function.'' Fund raising was not the purpose of the dining hall. Rather, it operated to furnish meals to the members attending services and receiving religious training. It was not intended to raise funds or operate at a profit. The Board has previously set forth its position that the exemption provided by Regulation 1603(l) is limited to meals served at ''fund raising'' functions. 9/12/83.

550.1085 **Sales of Alcoholic or Carbonated Beverages for a Separate Price.** The exemption provided by Regulation 1603(b) only applies to sales of meals and food products. Sales of alcoholic or carbonated beverages sold for a separate price are subject to sales tax. If such beverages are included in the price of the meal (single price) and the sale meets the requirement of the exemption, the beverage is regarded as part of the exempt sale of the meal.

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Whether or not an admission charge is made does not affect the exemption. 2/7/90.

550.1100 **Surcharges.** Surcharges collected on behalf of an organization who, by prearrangement, has a retailer collect a fixed sum per cocktail, etc., sold to members and guests of the organization are not gross receipts from the sale of the cocktails, providing:

(1) The patrons are formally notified that such a sum is to be collected;

(2) The amount is specifically stated in the formal notice;

(3) The total amount collected is paid over to the organization, and;

(4) The function during which the sums are collected is not open to the general public. 8/6/65.

550.1120 **Youth Centers,** tax applies to sales by to the same extent as to sales by restaurants, soda fountains and similar establishments. 1/17/50.

(g) EMPLOYEES', TEACHERS' AND STUDENTS' MEALS

550.1135 **California Conservation Corps.** CCC pays each corpsmember $580 a month and deducts $145 for room and board. This constitutes a specific charge as described in Regulation 1603(k)(2)(B). Although corpsmembers are required to attend specified evening workshops and classes, most of the classes are taught by other than CCC staff and at facilities other than those of CCC. The CCC is not a school but an employer providing opportunities for employees to further their education. Since a specific charge is made for meals, the portion of the $145 allocable to meals is a taxable sale. 7/15/86.

550.1160 **Caterer, Resale of Meals Purchased From.** Employer engaging outside caterer to prepare and furnish employee meals for which employer charges employees is purchasing meals for resale, can give resale certificate to caterer. 5/5/50.

550.1180 **Caterer Serving Meals at School.** Meals and other food products sold to students at a school cafeteria by a caterer, pursuant to an agreement between the caterer and a student organization, are taxable because the meals and other food products are being sold by the caterer to the students directly and not to the student organization for resale to the students. Exemption under Section 6363 of the Sales and Use Tax Law is applicable only in cases where meals and food products are sold to students of a school by public or private schools, school districts, student organizations, parent-teacher associations, and certain blind persons. 10/7/69.

550.1190 **Caterer Serving Meals—Various Situations.**

1) When the federal government funds a public school lunch program, the caterer hired by the school to serve the lunches may be selling meals to the public school for resale to the federal government. However, if the caterer is paid for the meal by the consumer himself, the transaction is subject to sales tax.

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2) The use of United States Government general assistance funds to purchase a meal does not qualify the transaction as a sale to the United States. 11/12/76.

550.1200 **Clubs.** Teacher organizations such as faculty clubs having a separate existence from a school or university as a legal ''person'' (e.g., corporation, unincorporated association) are not included within the meaning of ''school'' for purposes of the exemption which Section 6363 grants to meals sold by ''schools.'' 12/11/64.

550.1228 **Definition of Student.** For purposes of section 6363, a student is any person attending classes who is required to register with the school, even if the class is a one-time seminar for which a fee is charged. 10/17/88.

550.1234 **Employee Meals.** Employees of a restaurant are required to remain on the business premises for an 8-hour shift period but are authorized to have one-half hour for lunch during each shift. The employees are paid a flat sum of money for each 8-hour shift. Overtime pay is computed based on an allocable portion of an 8-hour work day. Based on the above, it is concluded that employees are being paid for an 8-hour shift and that this payment basis should be used in determining the hourly wage and the value attributable to employee's meals for purposes of determining meals credited toward the minimum wage for purposes of Regulation 1603(k). 8/8/77.

550.1240 **Farm Labor Contractor.** Under Sections 13(a)(2) and 13(a)(20), of the Fair Labor Standards Act (29 U.S.C.A. Sections 213(a)(2), 213(a)(20)), employees of ''retail establishments'' are exempt from coverage of the act. Pursuant to the decision of the U.S. District Court in *Mitchell* v. *Anderson,* 235 F.2d 638, the Wage-Hour Administrator in an opinion dated November 7, 1961, has concluded that kitchen employees of a farm labor contractor serving meals to Mexican nationals employed by farmers, are not employees of a ''retail establishment.'' Although, for the purposes of the Fair Labor Standards Act, the contractor is not a ''retail establishment,'' nevertheless, the contractor is a ''retailer,'' as defined in Section 6015 of the Revenue and Taxation Code, whose gross receipts from sales of meals are subject to sales tax. 12/11/64.

550.1260 **Farm Laborers.** Under Section 6363 as amended, effective 9/20/63, sales tax applies to sales of meals by employers of Mexican nationals, but does not apply to sales of food to be prepared by the employees themselves. 10/23/63.

550.1270 **Fast Food Chains—Students' Meals.** Where the students purchase meals from schools or PTAs and these meals are sold to the schools or PTAs by outside entities such as fast food chains, the sale to the school district or PTA would constitute a sale for resale while the subsequent sale to the students would be considered nontaxable pursuant to section 6363. The school district or PTA must independently contract with outside entity for the purchase of food products. If the outside entity sold the products directly to the students, such sales are not sales by the school and do not fall within the above exemption.

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Where the school districts or PTA will be using the fast food products as components of preparing ''free'' lunches, the school or PTA is the consumer of the property used to prepare the free lunches. However, section 6363 specifically provides that the exemption for school meals applies to sales, use, or other consumption of food products furnished or served to students. Thus, as long as the food products purchased by the schools or PTAs are component of lunches furnished or served to the students, the exemption will apply to purchases of these food products. Under these circumstances, the school or PTA should issue an exemption certificate as provided in Regulation 1667 to the vendor. 8/17/95.

550.1275 **Firefighters.** The California Department of Forestry and Fire Protection (CDF) requires its firefighters to reside and eat in their fire stations when they are on duty. CDF buys the food products, and cooking duties are performed by the captain or whomever is assigned the function by the employer. Based on the prior years total food cost and number of meals served, CDF determines the average cost per meal, to which sales tax reimbursement is added, and deducts that amount from the firefighter's paychecks. On occasion, other persons eat at the fire stations, but they are apparently not charged for the meal.

CDF is a retailer selling food products in a form for consumption at tables, chairs, counters or from trays, glasses, dishes, or other tableware which it provides. As a result, under Regulation 1603(f), its sales of food products to employees are subject to tax with deduction from their paychecks being a proper method of collecting sales tax reimbursement. CDF must also pay tax on its sales of meals to nonfirefighters at the stations and may collect sales tax reimbursement from those persons by agreement with them. 1/23/80; 2/14/96.

550.1280 **Guests.** Where meals are furnished to guests of students but are charged to and paid for by the students, the exemption applicable to students' meals is properly applied and no tax is due, even though the meals are actually consumed by the guests. Such meals are not sold to the guest, but to the students. 9/28/51.

550.1295 **Employees', Teachers', and Students' Meals.** A student lounge is operated on the premises of a graduate school and is controlled and directed by a student association which is the governing body of the entire student body. The association recently contracted with an outside management company who, for a fee based on percentage of total revenue, provides the operational management of the lounge. The control and ownership of the lounge remains with the association which controls all areas of the operation including the setting of prices, house operations, and decisions regarding the menu. The management company has not used the association's previous seller's permit.

It is assumed that the management company reports and pays tax under its own seller's permit number, and that it runs the lounge with its own employees over which it has the sole authority to employ, transfer and terminate. Also, the management company purchases the foodstuffs from the purveyors of its own choice from whom it takes title in its own name, prepares the foodstuffs into the

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form necessary for consumption by the students, and when so prepared, sells them directly to the students who pay on a cash basis at the time of purchase.

The Section 6363 exemption is only applicable where meals and food products are sold to students of a school by public or private schools, school districts, student organization, parent-teacher associations, and certain blind vendors. In this case, it appears that the management company is selling the meals directly to the students. The management company is using their own employees to purchase and prepare the food under the overall supervision of the association. The employees sell the food and receive the payment and the management company reports and pays tax presumably under its own permit number. Under these circumstances, the students contract with the management company to purchase the meals. The gross receipts from these sales are subject to tax. 4/23/93.

550.1300 **Minimum Wage Law.** When employees who are subject to minimum wage orders receive meals in lieu of cash payments, the difference between amounts actually paid to employees subject to minimum wage orders and the amount of the minimum wage is regarded as consideration attributable to the furnishing of meals, and this difference represents taxable gross receipts from the sale of meals. Sales of such meals are, under Section 6363, effective September 20, 1963, taxable. In such circumstances the amount of tax due may be measured by taking the appropriate percentage of the difference. No amount need be charged to the employee as tax reimbursement because the amount is considered to be included in the value of the services rendered. 3/4/64.

550.1305 **Minimum Wage Law.** Under regulations promulgated by the Division of Industrial Welfare, Department of Industrial Relations, only cash or its equivalent, and gratuities (tips) and meals up to certain specified amounts, may be used to meet minimum wage requirements for women and minors in the public housekeeping industry. Fringe benefits paid for by the employer, including health and accident insurance premiums, may not be credited toward the minimum wage. Consequently, when cash wages plus tips do not equal the minimum wage, and the employee eats meals furnished by his employer, the value of the meals up to the maximum allowable amount is includable in the employer's gross receipts from the sale of meals even if he also pays health and accident insurance premiums for the employees. 6/4/71.

550.1310 **Minimum Wage Law.** Where a restaurant pays waitresses wages less than the minimum wage and no record is kept of tips received, the value of meals furnished to the employees is includable in the measure of the tax.

Since there is no other source from which to meet the minimum wage, it is implicit that the meals are used to meet the difference between the actual wage and the minimum wage. This difference is considered a specific charge. 8/25/70.

550.1320 **Number of Employees.** The requirement of five or more employees (Regulation 1603(k)(1)) applies to employees of the school district, not of the individual school. 11/15/63.

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550.1326 **Organizations Included In "Public School."** The term ''public school'' as used in section 6363 includes auxiliary organizations organized and operated under the Education Code and applicable regulations to provide food service to students of the state university and college systems.

The exemption for sales of meals or food products to students by a school (or qualified auxiliary organization) does not extend to carbonated beverages unless the beverage is sold as part of an exempt meal sold for a single price which is listed on a menu or wall sign. 10/17/88.

550.1330 **Outside Entity Selling Meals To Students.** A food service operator has a contract with an educational institution to operate the institute's food service facilities. The institute pays the operator a management fee. The contract also calls for the operator to turn over to the institute any amount by which the operator's gross receipts exceed its cost of business. If the gross receipts do not total its cost, the institute reimburses the operator for the shortfall in addition to the management fee.

Under the term of the contract, the food service operator and not the institute is selling the food to the students. Accordingly, the sales are not exempt as sales to students by the institution (Sales and Use Tax Regulation 1603 (j)). 1/25/93.

550.1340 **Private Schools.** ''Private Schools'' as used in Section 6363 include only those schools which substitute for public schools in providing equivalent education. The term does not include a specialized training center. 12/5/63.

550.1355 **Sales of Beer and Wine at Colleges and Universities.** There are no special Alcoholic Beverage Control (ABC) regulations which apply to the sale of alcoholic beverages by colleges or universities or by the student organizations at the schools. These organizations are required to be licensed in the same manner as any other dining facility serving alcoholic beverages. The ABC regulations make no distinction between sales to students or nonstudents.

The sale of nonfood beverages such as carbonated beverages, beer, wine, and distilled spirits are exempt when included in a meal which is sold to a student for a single price pursuant to Regulation 1603(j)(2). Nonfood beverages are not exempt when sold alone or sold with food items but individually priced. Also, nonfood beverages sold to teachers, staff, or guests are not exempt no matter how they are sold. 8/6/90; 7/10/96.

550.1360 **Sales of Meals to Corporate Training Centers.** A corporation operates a training center for its employees. It contracts with a food supplier to furnish meals to trainees. The corporation makes all payments to the food supplier. No charge is made to the trainees for the meals.

The training center does not qualify as a school in as much as the corporation is not an academic institution that is conducting educational instruction. The furnishing of meals is not exempt as sales of meals to students. Tax applies to the sale of meals by the food supplier to the corporation. 4/28/87.

550.1365 **Sale of Meals to Executives.** An employer required its executives to eat in the company dining room when hosting business guests and to pay the bill

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on their personal credit card. To obtain reimbursement for the meals, the executives would include the charges for meals on their weekly expense report.

These transactions were sales from the employer to the executives. When the executives paid by credit card, they incurred a legal responsibility to repay the credit card company regardless of whether or not they were reimbursed by the employer. Although the employer could have structured and accounted for these transactions to be non-taxable, the employer chose to sell the meals to the executives in the same manner as it would sell to anyone else, and then reimburse the executive. Having made this business decision, the employer is bound by the form it has chosen. Therefore, the sales of meals to the executives remain subject to tax and do not represent nontaxable intra-company sales. 4/3/92.

550.1370 **Sales of Meals and Food Products at Schools and Colleges.** An independent food service contractor operates food service facilities at schools and colleges. Following is a description of the sales transactions which occur at these school facilities:

(1) Cash sales. Food and beverage sales are made directly to students and faculty members. The company retains all receipts.

(2) Charge sales. Students purchase meal tickets from the school or college as part of their room and board plan. Meal tickets are redeemed by the company at the school cafeteria and the school is billed directly by the company for each ticket redeemed at a predetermined price per meal.

(3) Special event sales. The company provides catering services at school functions and events and bills the school directly. These services are also made available to student organizations.

(4) Vending machine sales. The company sells food, beverages, snacks, and cigarettes through vending machines located on school premises.

Tax applies to the gross receipts from the company's retail sale of meals, food, beverages, and other tangible personal property described under transactions (1) though (4), unless such gross receipts are otherwise exempt from taxation.

Students receiving board from a school or college are considered to be purchasing meals in the school cafeteria or dining facility from the school rather than from the company provided

(a) the students contract only with the school or college for the board,
(b) all payments for meals and food products are made directly to the school or colleges, and
(c) the school or college is solely responsible for providing board to the students.

To the extent that the sales of meals and food products under transaction (2) represent board meals, the company's gross receipts received from the school may be regarded as receipts from sales for resale and the receipts received by the school for the students' board meals are exempt from tax.

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Effective August 1, 1983, assuming that the company is the operator of the vending machines located on the school premises, tax applies to the gross receipts from the company's sale of hot and cold food product and other tangible personal property through vending machines regardless of the price charged for such items. 1/23/84.

(Note subsequent statutory change regarding vending machine sales)

550.1372 **Sales of Meals and Food Products Through Vending Machines to Students.** Tax does not apply to retail sales of food products or meals, whether served hot or cold, through a vending machine or otherwise by a public or private school to its students. However, this exemption does not apply to such sales of food products and meals to nonstudents.

In those situations where sales of food products and meals are made through the school owned vending machines to both students and nonstudents, a reasonable allocation between exempt and nonexempt sales can be made. In such cases, the school can establish a representative test of the vending machine sales occurring on the affected campuses. However, before implementation of such a test, it is recommended that the school submit the proposed testing procedure to the Board's appropriate Headquarters section for review so that it can determine its adequacy and advise the Board's district office serving the affected school's campuses. 10/19/83.

550.1373 **Sales of Meals by Independent Contractor.** A company has entered into a contract with the college granting the company an exclusive right to operate food service facilities on the campus. According to the contract, its sole purpose is providing food and beverage services for students, faculty, staff, and guests of the college. Meals sold by the company to students are cash sales paid at the time of purchase.

It is clear from the express language of the contract that the company functions as an independent contractor. The statute clearly states that the exemption is available to public or private schools, school districts, student organizations, parent-teacher associations, and any blind person operating a restaurant or vending stand in an educational institution. The company falls into none of these categories. Rather, the company is a for profit corporation operating food service establishments as an independent contractor. The company is not entitled to the section 6363 exemption and is thus liable for sales tax on the gross receipts of its sales of meals at the food services facilities located on the college campus. 8/28/89.

550.1375 **Sales by Nonprofit Foundations at Colleges and Universities.** These foundations are nonprofit organizations known as ''auxiliary organizations'' of the California State University and Colleges which are organized and operated pursuant to Educational Code sections 89900 et. seq. and regulations promulgated by the Board of Trustees of the State University and Colleges codified under Title 5 of the California Administrative Code sections 42400 et. seq. The auxiliary organizations are formed to provide certain essential functions integral to the education mission of the parent state university or college campus.

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The range of appropriate activities engaged by auxiliary organizations include the operation of commercial services such as food service.

The furnishing of meals to students by auxiliary organizations is attributable to the auxiliary's parent education institution. Accordingly, the term ''public school'' as used under section 6363 includes auxiliary organizations which are organized and operated under the Education Code and applicable regulations to provide food service to students of the state university and college system. 5/31/84.

550.1380 **Specific Charge.** Sales of meals to school employees are subject to tax. However, the sales are taxable only if a specific charge for the meal is made to the employee by payroll deduction or otherwise. Book entries made merely for the purpose of placing a monetary value on the meals furnished employees as a part of compensation are not considered specific charges. In collecting the tax reimbursement, the seller may include the tax in the sale price of the meal, and the school may compute its tax liability to the state upon the sale price less the tax included. 11/2/64.

550.1400 **Specific Charge.** Under a union agreement, employees of a restaurant are entitled to two meals a day or $1 in lieu thereof. It is the employer's practice to pay each employee the $1 meal allowance as an addition to earnings and to deduct this amount when meals are consumed, without regard to the actual retail value of such meals. The $1 meal allowance is a specific charge for meals and is subject to tax. 7/30/65.

550.1420 **Specific Charge.** Employer is not taxable on meals furnished to employees unless he makes specific charges for such meals, and reporting fair market value of meals pursuant to government regulations, or union contracts, does not constitute such a charge. Specific charges do include cash or the withholding from wages of an amount sufficient to cover the charges. If an employee receiving meals receives less wages than other similar employees, the difference is regarded as a specific charge for meals. 9/30/63, 10/15/63, 11/7/63, 12/4/63.

550.1434 **Student Meals.** A nonprofit organization, organized pursuant to the General Nonprofit Corporation Law of California, operates a camp program for several cooperating denominations. Among the primary purposes of this organization are to manage, administer, and operate religious and charitable camps, conferences, and retreats, and to provide consulting services, programming, and leadership training for religious education at such camps, conferences, and retreats.

Section 6363 exemption would apply to the organization's sales of meals to the extent that the camp could be regarded as a school or educational institution and the sales were to students at the school. To qualify as a school or educational institution, the camp must conduct regularly scheduled classes with required attendance in charge of qualified instructors. To qualify as students, the camp

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participants must be formally enrolled in the classes. If the organization's sales of meals come within the above guidelines, the gross receipts received from the sales of meals are not taxable. 9/21/71.

550.1435 **Student Meals.** A university conducts a talented youth program (CTX) during the summer. The program offers extensive courses to the students. The students can often get high school, and even college, credit for CTX courses. Students are served meals during their stay.

Persons enrolled in the CTX program are ''students'' within the meaning of Regulation 1602 (J)(2). Accordingly, sales of meals to CTX students are exempt from tax. 2/17/93.

550.1436 **Student Meals.** Meals served to attendees at a ranch operated by a county which provides regularly scheduled classes taught by persons with proper credentials are ''student meals''. Sales by a county agency to the attendees qualifies for the exemption for sales of student meals by a public school.

The furnishing of meals together with lodging to outside organizations which rent the facilities do not qualify for the exemption provided in Section 6363. 7/10/92.

550.1440 **Students, Who Are.** Persons attending specialized short courses at a college qualify as ''students'' if they are formally enrolled therein. Accordingly, the college's receipts from sales of meals to such persons are exempt from sales tax under Section 6363. Persons attending lecture series which are open to the general public without any requirement of enrollment do not qualify as ''students'' under Section 6363. 2/26/68.

550.1460 **Students, Who Are.** Sales of meals furnished to high school girls participating in Girls State on the Davis campus of the University of California are exempt as sales of meals furnished to students under Section 6363. 11/13/67.

550.1465 **Subsidies to Meal Vendors.** A taxpayer is engaged in preparing and serving meals in cafeterias and executive dining rooms pursuant to written agreements with clients. The clients own, furnish, and maintain the cafeteria and dining room premises and equipment. The agreements provide for a management or service fee and for a subsidy to guarantee an adequate return to the taxpayer. All meals are billed periodically to the clients. No charges are made to the individual diners either by the taxpayer or the clients.

The taxpayer is regarded as making taxable sales of meals to its clients and the amount subject to tax includes the subsidies. In contrast to *Szabo Food Service, Inc.* v. *State Board of Equalization* (1975) 46 Cal.App.3d 268, the diners here did not individually purchase meals. 6/23/94.

(h) PREPARED FOOD IN CONTAINERS

550.1480 **Banquets.** The sale of cold food prepared for banquets, parties, weddings, etc., picked up by purchasers and subsequently served elsewhere by the purchasers, is not subject to tax. 5/6/54.

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550.1500 **Carts.** Sales of wrapped food items such as doughnuts, sandwiches, pies, milk and coffee are not taxable when they are made from carts located outside the entrance of a plant to employees who take them to their desks or workbenches for consumption. 1/18/65.

550.1540 **Coffee—Paper Cups.** The sale of fresh liquid coffee, not accompanied by a sale of other food products in such a way as to constitute the service of meals, to employers who distribute the coffee free to their employees during established coffee breaks is the sale of an exempt food product. However, the sale of paper cups to the employees is taxable where it is not a direct sale of the cups containing the coffee to the employees or to the employer. 7/13/64.

550.1560 **Contracts to Furnish.** A retailer has an informal arrangement with an industrial employer whereby he is permitted to sell pre-packaged food items for consumption at tables and chairs in its plant in return for which the retailer pays 4 percent of his gross to the employer. Sales of such food products under such an arrangement are taxable beginning September 17, 1965. 1/14/66.

550.1580 **Cooking Containers.** Delivery of food in the containers or pots in which it is cooked is not subject to tax, provided these containers or pots are used only to deliver the food to customers who consume the food away from seller's premises and without the use of any dishes or other tableware provided by the seller. It is immaterial whether or not the containers are returned to the retailer. Separate records should be kept of these types of sales for verification of exemption. 1/28/55.

550.1600 **Foil.** Prepared food wrapped in foil and nonreturnable containers, delivered by a seller to customer's premises without the furnishing of any eating utensils, constitutes a nontaxable sale of food products. 5/17/54.

550.1620 **Use of Facilities Furnished by Customer of Retailer.** The 1965 change in Section 6359 does not require that the tax be held to apply to the sale of food in bulk insulated containers, which is consumed by employees of an oil refinery, even though some of the facilities for consumption are furnished by the refinery.

The facilities must be reasonably intended for use in consuming the food purchased as evidenced by proximity of the facilities to the place at which the food is sold, and by the terms of the agreement which in some manner shall obligate the food seller to sell food to someone other than the party actually furnishing the facilities. 11/29/65.

550.1640 **Work Benches, Food Consumed at.** Food and food beverages served to employees at their work benches by a mobile coffee and pastry service, and consumed there, is not taxable provided it is supplied only in nonreturnable containers. 4/5/60.

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(i) NON-FOOD COMPONENTS OF EXEMPT MEALS

550.1650 **Carbonated Beverage Sold as Part of Exempt Meal.** When sold together for a single established price, the sale of a carbonated beverage is exempt as part of the sale of a student meal. If the single price for the combination of a carbonated beverage and the meal is listed on a menu or wall sign, a single price has been established. Where each item is charged separately, even though rung up at the same time, tax applies to the sale of the soft drink. 3/28/91.

550.1660 **Chewing Gum** not properly regarded as part of an exempt ''meal.'' 6/1/51.

550.1655 **Carbonated Beverages Included in a Meal Sold "To Go" for a Single Charge.** A restaurant sells a ''bundled meal,'' which includes a cold sandwich and a carbonated beverage, for a single price. If the sale is ''to go'' and is not otherwise taxable under Revenue and Taxation Code section 6359 (e.g., sold for consumption at facilities provided by the retailer or at facilities provided for that purpose, or taxable under the 80-80 rule), the sale of the cold sandwich to go is exempt from tax, but the sale of the carbonated beverage is taxable. Thus, the portion of the price for the bundled meal sold ''to go'' allocable to the carbonated beverage is subject to tax. 11/13/2001.

550.1680 **Soft Drinks** may be sold to schools, etc., for resale as part of meals even though sale of meals is exempt. Tax applies to sales of soft drinks at school snack bars, etc., when not sold as part of exempt meals. 4/21/50.

550.1700 **Vitamin Pills,** if actually part of an exempt meal, then exemption of the meal is inclusive of the amount of the charge for meal applicable to the pills. 12/4/51.

(j) HOT PREPARED FOOD PRODUCTS

550.1710 **Cooking Cold Food Products.** A charge made for cooking cold food products (turkeys, hams, etc.), furnished by customers and delivered to them in a heated condition, is subject to tax commencing January 1, 1972. 12/30/71.

550.1712 **Croissants.** A fruit or cream filled croissant is a ''bakery good'' within the meaning of Revenue and Taxation Code section 6359(e). Therefore, sales of such items in a heated condition not in combination with any other item are not subject to tax under Regulation 1603(e)(1). However, a croissant filled with meat and cheese is not a ''bakery good'' within the meaning of Revenue and Taxation Code section 6359(e). It is more in the nature of a sandwich than a bakery good. Therefore sales of such items in a heated condition not in combination with any other item are taxable sales of hot prepared food products under Regulation 1603(e)(1). 11/14/95.

550.1715 **Fresh Crab and Lobster.** Crab and lobster sold in a live condition and killed for the customer by placing in boiling water does not result in a sale of hot prepared food within the meaning of the term under Section 6359(e) of the Sales and Use Tax Law or Regulation 1603(d)(1). The primary purpose of offering the

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product for sale in a live condition is to prove freshness, and the primary purpose of placing it in hot water is to kill it. Fresh killed crab and lobster are not ''prepared'' within the meaning of the word when it is not cleaned and presented in a ready-to-eat condition. 8/4/75. (Am. 2000–1).

550.1753 **Microwave Oven.** Sales of food products are considered taxable sales of hot food items when a taxpayer's premises include microwave ovens if (1) the food is of the type which is normally consumed at above room temperature (such as scrambled eggs, pancakes and french toast) and (2) the microwave ovens are accessible only to the vendor. In those situations the fact that the customers

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cannot heat the food indicates that the vendor is selling the food to the customers in a heated condition. If the heating units are readily accessible to the public, the sales should be regarded as nontaxable sales because the customers are buying the food cold and heating it themselves unless the food products are sold as meals for consumption at facilities furnished by the retailer, or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others, or sold in a place subject to an admission charge. 1/23/78.

550.1770 **Nuts.** The sale of hot nuts which are sold from enclosed display cases and that are heated through the use of ordinary light globes constitutes a sale of a hot food product and is therefore subject to tax. 8/28/72.

550.1775 **Pasties.** A pasty is not a "bakery good" within the meaning of Revenue and Taxation Code section 6359(e). It is actually an entire meal, compacted into a form more convenient than the ingredients would be if sold as a conventional meal on a plate or cardboard tray. Therefore, sales of pasties in a heated condition constitute taxable sales of hot prepared food products under Regulation 1603(e)(1). 11/14/95.

550.1950 **Sales of Hot Meals by River Rafting Companies.** A typical commercial white water rafting in California consists of taking groups of people down various rivers which have navigable rapids. None of the land or campsite along the river is owned by the rafting companies. The river trips are conducted by trained guides, often lasting from one to seven days. For multi-day trips, the passengers provide their own gear and eating utensils, and the companies provide, for a lump-sum charge, the guides, boating equipment, cooking gear, and food consumed by the passengers. During the multi-day expeditions, the guides prepare the meals consumed by the passengers. Typically, the lunches consist of cold sandwiches, whereas the breakfasts and dinners comprise both hot and cold foods. Under the above circumstances, the river rafting companies are retailers who sell hot prepared food to their passengers. 9/23/83.

550.2020 **Tortillas.** Tortillas qualify as bakery products and their sale is exempt from tax whether they are sold hot or cold, to the same extent that other bakery products sold on a "take-out" basis are exempt. 1/19/72.

TAXIDERMISTS
See Miscellaneous Service Enterprises.

TELEPHONE AND TELEGRAPH LINES
See Buildings and Other Property Affixed to Realty.

TENNIS RACKET RESTRINGING AND REPAIRING
See Miscellaneous Repair Operations.

TIPS
See Taxable Sales of Food Products.

TIRES
See Retreading and Recapping Tires.

TRADE-INS
See Barter, Exchange, "Trade-ins".

555.0000 TRADING STAMPS AND RELATED PROMOTIONAL PLANS—Regulation 1671

555.0015 **Cash Register Receipts Promotion.** A grocery retailer has a program where by schools or various organizations can obtain computer products by accumulating the grocer's cash register receipts. The accumulated receipts are deposited with a third party servicing vendor who issues periodic statements of account balance (accumulated tape value) to the school. When the required tape value is reached, the grocer places a purchase order with an out-of-state vendor who ships the product directly to the school and invoices the grocer.

This plan is distinguishable from that described in Regulation 1671. Second, the school is not obligated to promote shopping at the grocery store as a condition of receiving computer products. The program is promoted by asking its students and P. T. A. members to collect the sales slips from their grocery purchases and turn them over to the school rather than throw them away.

Under the above scenario, the computer products are considered to be a donation by the grocer to the school. Also, since the supplies and the property are located out of state, the donation (use) occurs outside of California and is not subject to tax. 4/9/91.

555.0020 **Discount.** Purchase price of trading stamps may be taken as a discount in connection with taxable sales. 7/14/50.

555.0021 **Discount.** An oil company sells tires, batteries and accessories (TBA) to its dealers and also sells service station equipment. The dealers receive ''credits'' for purchases of TBA that can be applied only to purchases of equipment. The dealer must pay at least 70 percent of the regular price of the equipment from his own funds. The credit is a wholly contingent right. It is contingent upon the subsequent purchase by the dealer of equipment and payment of 70 percent of the normal price for the equipment. The oil company incurs no expense by issuing the contingent credit.

The allowance of these ''credits'' is viewed as a discount on the charge made for the equipment. The amount of tax due on the sales of the equipment is based on the charge for the equipment less the ''credits'' allowed. 1/30/73.

555.0040 **Discount, How Computed.** The amount of the deduction for trading stamps is computed by applying to the cost of the stamps to the retailer the ratio of taxable sales on which stamps are given to total sales on which stamps are given. 7/3/53.

TRADING STAMPS, ETC. (Contd.)

555.0060 **Hybrid Plan.** A retailer who distributes to his customers stamps which may be redeemed for merchandise or service worth $3.00 at the store of any retailer who handles that type of stamp, is entitled to his cash discount deduction as of the time he buys the stamps. A retailer who redeems a filled book would have additional gross receipts of $3.00 and the taxability of the $3.00 would be identical to a situation in which a customer had paid $3.00 in cash for the same merchandise or service. 1/13/61.

555.0080 **Out-of-State Shipment by Redemption Center.** A trading stamp redemption center in California receives mail orders for premium merchandise together with trading stamps for redemption from out-of-state persons. The redemption center redeems the stamps for merchandise which it ships by mail to the out-of-state persons. Since the transfer of merchandise in exchange for the trading stamps is a sale and the merchandise is shipped to the recipient at a point outside this state, such transaction is an exempt sale in interstate commerce. 8/18/67.

555.0100 **Printing Stamps and Books.** Charges for printing merchandise premium trading stamps and stamp saver books are taxable retail sales. 5/17/54.

555.0140 **User of Stamps, etc., Distributor as.** The distributor of premium stamps does not sell anything tangible to participating dealers and hence is the consumer of stamps, stamp books, catalogs and advertising media, and subject to use tax thereon where purchased under a resale certificate or outside this state, and the use occurs in California. 3/1/56.

TRANSCRIPTIONS
See Sound Recording.

TRANSFORMERS
See United States Contractors. Rewinding, see Miscellaneous Repair Operations.

TRANSIT
Goods Damaged in, See Goods Damaged in Transit.

TRANSMISSION AND DISTRIBUTION LINES
See Buildings and Other Property Affixed to Realty.

557.0000 TRANSPORTATION CHARGES—Regulation 1628
See also C.O.D. Fees.

557.0003 **Actual and Average Shipping Costs.** A taxpayer operates a catalog mail order business in California selling to customers in every state. When an order is received at the taxpayer's California location, the merchandise is shipped directly to the customer by common carrier from a central warehouse located outside California. A delivery charge, based uniformly on merchandise price and not on destination, is added to the purchase price and is separately stated. The catalog and order blanks do not state when title to the goods passes to the purchaser.

TRANSPORTATION CHARGES, ETC. (Contd.)

The taxpayer does not charge its California customers for California sales or use tax on the separately stated delivery charges that it has added on to the purchase price of the goods sold. Instead, it has reported and paid tax measured by the difference between the total delivery charges billed to its California customers and the total amount charged by the carrier for such shipments for the same reporting period.

The taxpayer may not average out its transportation sales for the reporting period and pay tax only on the difference between the total amount billed to its customers and the total amount of its transportation cost for the reporting period. For example, if the taxpayer charges $10.00 for transportation on $100.00 sale, the transportation charges for these sales are excluded as follows:

(1) Merchandise price $100.00 plus $10.00 transportation charge. The actual cost of the transportation billed to the retailer is $12.00. Only the $10.00 is excludable.

(2) Merchandise price $100.00 plus $10.00 transportation charge. The actual cost of the transportation is $3.00. Only the $3.00 actual cost is excludable as a nontaxable transportation charge.

The result of these two transactions is that the total sales the taxpayer should report on line 1 of the sales and use tax returns should be $220.00. The taxpayer is entitled to take a deduction of $13.00 transportation charges. 8/16/95.

557.0005 **Actual Cost of Transportation.** One of the requirements for the exclusion of separately stated transportation charges from the measure of tax is that the cost of transportation is the actual shipping cost. This actual cost is determined on a transaction by transaction basis. Thus, to be entitled to the exclusion, in addition to the requirement set forth in Regulation 1628(a), the retailer will need to keep records showing the actual cost of transportation for each transaction. The amount of each individual cost of transportation is the amount excludable. 7/24/91.

557.0009 **Agent for Customer.** A trucking firm does not hold a seller's permit. The firm has arrangements with contractors who place orders for dirt, sand, gravel, and related materials with the firm by phone. The firm then orders the materials from a specific supplier for delivery to the contractors. The firm renders a billing to each customer in the name of the firm and without reference to any agency. Materials are purchased ''tax paid'' and billed to customers at the same price as purchased from the vendor plus transportation charges which are mostly done by the firm's own trucks.

A weight slip is signed by a representative of the contractor at the time of delivery of the materials and a copy of this weight slip is returned to supplier. The supplier then issues a preliminary Notice of Lien to the customer.

Based on this scenario, the materials are being ordered by the trucking firm as agent for the contractor. The material supplier regards the transaction as an agency transaction as evidenced by its issuance of a preliminary Notice of Lien to the contractor for each transaction. If the sale by the supplier were made to the trucking firm, as principal, for resale and not on behalf of a contractor, the actual

TRANSPORTATION CHARGES, ETC. (Contd.)

perfection of a lien against the customer would be unlawful. The contractor believes the arrangement amounts to an agreement to purchase as agent since many of the contractors have executed written agency agreements with the trucking firm. Therefore, the separately stated transportation charges are not includable as taxable gross receipts because the transportation services are not performed by facilities of the retailer, supplier, and are derived from delivered price transactions. (Regulation 1628(a) and (e).) 6/7/94.

557.0020 **Asphaltic Paving Materials.** Asphaltic paving material is manufactured in the vendor's plant according to specifications of the buyer, which vary considerably, and, when hot, is highly perishable and cannot be returned.

(1) Where delivery is made in the vendor's own trucks title passes upon delivery at the destination and charges are taxable.

(2) When delivery is made in the buyer's trucks title passes at the plant site and charges are deductible.

(3) Where delivery is made by an independent public carrier title passes at the plant site upon delivery to carrier and charges are deductible. 6/25/54.

557.0025 **Asphalt Paving Materials—Passage of Title.** A taxpayer sells asphalt products and mixtures, mineral aggregates, and rip rap, ''FOB Plant + tax.'' In the past, the taxpayer had delivered materials at its plant to its customer's trucks or had provided for outside carriers if the customer did not furnish the trucks. When outside carriers were used, transportation charges were separately stated in the taxpayer's sales invoices. The taxpayer then acquired trucks of its own and, in some cases, began making deliveries itself. The taxpayer did not alter its pricing and billing practices. Transportation charges continued to be separately stated to customers on invoices with the following statement:

''We make deliveries inside the curb line and on the lot at customer's risk only and accept no responsibility whatsoever for damages resulting upon such deliveries. Title passes to buyer upon delivery of goods to the carrier.''

The taxpayer has been using the same invoices regardless of whether delivery is made by outside carrier or by its own trucks. It seems appropriate to find that, as a course of dealing between seller and individual buyers, they have explicitly agreed that title to goods passed at the seller's plant. (Commercial Code section 1205). This agreement may be found in interpreting the word ''carrier'' as used on taxpayer's invoice to include taxpayer's own carriage facilities. Thus, in this case, the transportation charges involving carriage by the taxpayer's facilities are excludable from the measure of tax. 7/20/72.

557.0052 **Conflicting F.O.B. Delivery Terms.** When a seller's bid quotation to its customer includes an F.O.B. factory delivery term (with no title clause and delivery is by common carrier) but its customer's purchase order includes an F.O.B. jobsite delivery term, the two delivery terms are in conflict with each other and neither term would be considered to be part of the contract as each party is considered to have objected to the delivery term of the other party under Commercial Code section 2207.

TRANSPORTATION CHARGES, ETC. (Contd.)

The net effect of conflicting F.O.B. terms is that the contract becomes a ''shipment contract'' rather than a ''destination contract'' by operation of section 2401(2) and 2504(a) of the California Commercial Code and title passes on the retailer's delivery of the property to the carrier prior to commencement of transportation. Thus, the seller's transportation charges are excluded from the measure of tax. 9/20/85.

557.0060 **Construction Contractors.** Where a contractor is the consumer of materials, the charges for transportation of materials from his supplier to his place of business or directly to the jobsite are governed by Regulation 1628, recognizing the supplier as the retailer. Any charges for transportation of such materials from the contractor's place of business to the jobsite are not includable in the measure of tax.

A contractor is the retailer of a fixture that he installs but, if his contract with his customer does not state the sales price of the fixture, the sale price is the cost price of the fixture to the contractor as provided in Regulation 1521 and the net effect with respect to transportation charges is the same as if materials were involved. However, if his contract with his customer states the price at which the fixture is sold, tax applies to that price and charges for transportation are governed by Regulation 1628, recognizing the contractor as the retailer. 2/7/78.

557.0080 **Catalogue Orders.** Where merchandise is ordered from a retailer on the basis of catalogue description and number, prices to be f.o.b. point of shipment with delivery charges separately stated, and where no agreement is made respecting passage of title and risk of loss during transit, delivery to be taken at the catalogue order office of seller, title does not pass until the customer takes possession; therefore, the transportation charges must be included in the taxable gross receipts. 12/8/60.

557.0085 **Concrete Pumping Charges.** A seller of concrete subcontracts the pumping of the concrete at the jobsite. The charges for pumping are added in handwriting to the printed invoice issued for a contract for a delivered price. The pumping charges are transportation charges within the meaning of Regulation 1628(a). Since the ''delivered price'' did not include pumping charges, such charges are excluded from the measure of tax because they are separately stated and the seller did not deliver the concrete in its own facilities. 11/3/93.

557.0088 **Courier Service.** A company that provides courier service to other companies by delivering documents, paychecks, and memoranda is not delivering tangible personal property that it sells at retail to its customers. Instead, it is only providing transportation services to others who request that certain tangible personal property be moved from one location to another. Therefore, the company (courier) does not owe sales or use tax on its charges for transportation since it is not selling any tangible personal property at retail. 3/5/96.

557.0090 **Delivered Price.** Delivery charges for sand and gravel delivered by a retailer to a customer ''f.o.b. jobsite'' for a delivered price were subject to sales tax because title to the property passed to the customer after transportation of the property. 5/15/70.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0091 **Delivered Price.** A County Board of Education (Department) purchases textbooks directly from publishers as part of a statewide bid process administered by the California Department of Education. The publishers bid price is a unit price, which includes the cost of the textbook and what is described as the estimated cost of transportation. The books are delivered directly to the department and that is included in the bid price (without regard to the publisher's actual cost of such transportation). The publisher has represented to the Department that the stated transportation costs are not the actual costs of transportation but are only stated for the publisher's own internal accounting purposes.

In this situation, the textbooks are sold for a delivered price. Even assuming that title passes upon shipment, section 6012 provides that such transportation charges are nontaxable only if the separately stated transportation charges do not exceed the cost to the retailer of actual transportation. The publishers based their bid price upon total cost to be incurred in shipping the text books to customers in this state. They may allocate some portion of this cost to individual invoices, for internal bookkeeping purposes. In this case, the "estimated transportation" amount is includable in the measure of tax. 6/24/96.

557.0104 **Delivery Charges.** A company sells imported wines through retail outlets and also holds an off-sale beer and wine license. The company delivers wine from its retail outlets to consumers via its own vans or trucks. A flat charge for delivery is stated on the invoices. The charge remains the same without regard to the time or distance required for delivery and without regard to the quantity delivered. There is no written or oral agreement with the customer regarding the time at which title to the wine will pass to the customer. The company relied on ABC Rules 17 and 27 (California Code of Regulations, Title 4, Chapter 1, sections 17 and 27) to claim that title passed prior to delivery by operation of law so that it was not necessary to have any agreements with the customers.

Tax is due on the transportation charges. ABC Rules 17 and 27 do not support the company's claim that title passed prior to delivery. The cited portions of Rule 17 merely state that an order must be received from the customer before alcoholic beverages leave the vendor's premises. Subdivision (e) of Rule 27 merely prohibits delivery from storage facilities off the licensed premises. 6/12/89.

557.0105 **Delivery Charges—Bank Checks.** A bank orders personalized checks to be delivered directly to its customer. The printer bills the bank for the checks plus sales tax reimbursement and postage, which are all separately stated. The bank debits the customer's account for a lump-sum amount including the sales tax reimbursement paid to the printer and the postage charges.

The bank is the retailer of the checks and is required to collect the use tax on the sales price of the checks sold. The bank is not acting as an agent of the customer. Since there were no separately stated charges by the bank for delivery, the amount attributable to postage is not excluded from gross receipts. 7/2/73.

557.0106 **Delivery Charges—Cabinets.** A firm makes custom cabinets and delivers them to the customer, but does not install them. The delivery is by its

TRANSPORTATION CHARGES, ETC. (Contd.)

own trucks and the firm's insurance company would pay for any damage to the cabinets if damage occurred during delivery. The firm's contract with its customers provides:

''Please indicate color, delivery date and appropriate options, sign and return one copy with check for one third of the total. Be advised that title to your completed custom cabinetry passes upon completion of the work at our shop.''

The language in the contract is sufficient to pass title and separately stated delivery charges are not taxable. The insurance coverage is not a relevant consideration. 5/31/95.

557.0107 **Delivery Charges—Food Product.** When transportation occurs before the sale of prepared food is made to the purchaser, sales tax will apply to the charge for transportation. However, if the sale is not taxable, such as cold sandwiches, the transportation charges would not be taxable since the sale of the sandwich is not taxable. In the event that some of the sales are taxable such as carbonated beverages and other separately stated items are not taxable such as cold sandwiches, the taxable delivery charges should be added separately for all taxable items and separately for nontaxable items. When delivery charges are separately stated in this manner, it would help to ensure that the sales tax reimbursement collected is based on taxable delivery charges. 1/25/94.

557.0111 **Delivery Charges—Grocery Store.** Taxpayer is a grocer which, for an additional charge of $3.50, will deliver groceries to its customers. The deliveries are made by the taxpayer's vehicle and the sales are not C.O.D. but are charged to the customer's account at the time the order for the merchandise is placed. Since there is no explicit written agreement with the customer passing title to the merchandise prior to delivery, the $3.50 charge for delivery cannot be excluded from the measure of tax when the sale of the goods is subject to sales tax. If an order delivered to a customer consists solely of food products whose sale is exempt from tax, the delivery charges would, of course, not be subject to tax. On the other hand, if the customer's order includes a combination of merchandise, the sale of some of which is taxable and some of which is exempt, the delivery charges should be prorated between taxable and nontaxable portions of the sale. For example, if taxpayer delivers merchandise to its customer totaling

TRANSPORTATION CHARGES, ETC. (Contd.)

$15.00, $10.00 of which is exempt and $5.00 of which is taxable, one third of the delivery charge would be subject to sales tax. 6/25/97.

557.0112 **Delivery Charges Prior to Sale.** A printer ships proofs of preliminary and final prospectuses to the customer's lawyers and accountants using airmail or air freight. The recipients may make changes or corrections and return the proofs, or they can accept them without change. The separately stated charge for shipping the proofs is part of the gross receipts of the sale of the finished prospectuses. These charges are merely one of the costs of producing the finished products, and they may not be deducted or omitted from the gross receipts, pursuant to section 6012(a)(2). 10/17/75.

557.0115 **Delivery of Goods by More than One Carrier.** Taxpayer, an interior design firm, is in the business of selling custom furniture which it contracts with third parties to manufacture and ship. All furniture is delivered via common carrier to a local common carrier who then delivers the furniture to the taxpayer's customer. The carrier picking up at the point of origin will deliver only to a receiver/carrier. Thereafter, a local carrier is needed to complete the delivery. The furnishings never come to the taxpayer's office as it is a design studio only. The actual freight costs are billed to the customer.

The application of the tax depends on to whom the manufacturer delivers the furniture. If the manufacturer ships the furniture by common carrier to the taxpayer in care of a local common carrier and the taxpayer then directs the local common carrier to deliver the furniture to the purchaser, then any separately stated charges for transportation from the manufacturer to the taxpayer in care of the local common carrier are included in the measure of tax. That shipment is not ''directly to the customer.'' Only the separately stated charges for transportation of the property from the local common carrier from which shipment is made directly to the purchaser are not taxable.

On the other hand, if the manufacturer ships the furniture by common carrier to the purchaser in care of the local common carrier and the local common carrier then delivers the furniture to the purchaser, the property is considered as being delivered ''directly to the purchaser,'' notwithstanding the fact that more than one carrier may be used to complete the delivery to the purchaser. In such case, tax does not apply to the separately-stated transportation charges. 2/28/97.

557.0120 **Destination Price, Reduction of.** When a destination price is reduced by reason of the purchaser picking up the goods at the shipping point, tax applies to the actual price paid. 1/17/50.

557.0130 **Drop Shipments.** An out-of-state retailer engaged in business in this state receives an order from a purchaser who is not located in California and is not a retailer engaged in business in this state. The purchaser indicates that the merchandise is being purchased for resale to a consumer. The retailer is not told of and does not learn the name or address of the consumer. The purchaser hires a common carrier to pick up the products on a ''will call'' basis from the retailer's out-of-state location and deliver it to the consumer. Title to the merchandise passes to the purchaser at the retailer's out-of-state location.

TRANSPORTATION CHARGES, ETC. (Contd.)

This transaction is a drop shipment. Revenue and Taxation Code section 6007 imposes sales tax or use tax liability on the drop shipper when the delivery of the merchandise is to a consumer in California. A drop shipment generally involves three persons and two sales. The three persons are the true retailer, the drop shipper, and the consumer. The two selling events are 1) the true retailer's contract to sell property to the consumer and 2) the true retailer's contract with the drop shipper to purchase the property and to have the drop shipper deliver the property pursuant to the true retailer's instructions.

When the drop shipper is engaged in business in this state and the true retailer is not, the drop shipper's delivery of property to a California consumer is a retail sale and subject to either sales tax or use tax. The tax consequence does not change when the merchandise is delivered by the drop shipper to a third party common carrier at an out-of-state location for redelivery to the California consumer.

The drop shipper here made a retail sale when it delivered tangible personal property to its loading dock pursuant to instructions of the purchaser. The sale occurred when the drop shipper completed its obligations with respect to the delivery of the tangible personal property. The fact that the drop shipper did not take steps to ascertain whether the consumer is located in California (for purposes of determining the drop shipper's use tax liability) will not relieve it from the requirement to collect use tax. 09/27/00. (2001–3).

557.0160 **Facilities of the Retailer.** A company hauling goods sold by it at retail is not acting as a common carrier and, where title to the goods is found to have passed at point of delivery to the consumer, charges for transportation by the facilities of the retailer are not exempt. However, under Section 6012(c)(7), charges for transportation by independent haulers after July 1, 1964 may be excluded from the measure of the tax. 9/29/64.

557.0161 **Facilities of the Retailer.** Where a building materials supply company is owned by a sole proprietor who also owns all the stock of a corporation operating as a common carrier trucker, the engagement of the corporation to haul goods sold to the customers of the proprietor does not result in delivery being made by facilities of the retailer. The corporation is a separate entity from the sole proprietorship. 8/1/91.

557.0180 **Facilities of the Retailer, Delivery Between.** Charges for transportation from a retailer's mail order facilities to its retail stores at which customers place catalogue orders and pick up their purchases, must be included in the measure of the tax. Delivery from one facility of a retailer to another facility of the retailer does not constitute "delivery from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser." 11/17/66.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0210 **F.O.B. Clause.** When a contract does not contain a specific title provision but does contain the statement F.O.B. point of shipment:

(1) Section 2319 of the Uniform Commercial Code provides that:

"The term F.O.B. . . . is a delivery term under which . . . when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in . . . [Section 2504 of the Commercial Code] and bear the expense and risk of putting them into the possession of the carrier."

In other words, the contract is a "shipment contract", when the contract contains an F.O.B. place of shipment term. Title thus passes, in accordance with the rule stated in Section 2401(2)(a) of the Commercial Code, at the time and place of shipment. We are of the opinion that when the property is shipped by an independent carrier, title passes when the goods are placed with the carrier.

(2) Where shipment is made by facilities of the retailer, however, we are of the opinion that the contract is a "destination contract" despite use of the F.O.B. shipping point term. Section 2401(2)(b) of the Commercial Code provides that in the case of "destination contracts" title passes on tender of delivery at the destination. In other words, the sale takes place at the destination. 10/31/74.

557.0220 **"F.O.B.", Posting of Sign Showing.** In the absence of any specific intention to pass title to the property prior to delivery, when delivery is required under the contract of purchase, the mere posting of a sign in seller's yard stating: "All materials sold f.o.b. yard," is not sufficient. Title passes upon delivery and the cartage charges are taxable. 7/23/53.

557.0226 **Forklift Charges.** A taxpayer often delivers supplies to its customers. On occasion, it may unload the merchandise for the customer. In those cases in which it unloads the merchandise, it bills the customer a "forklift charge."

TRANSPORTATION CHARGES, ETC. (Contd.)

A charge for unloading property is part of the delivery charge. Under Regulation 1628, such charges are nontaxable only if title passes prior to that unloading. Unless there is an explicit agreement to pass title at an earlier time, a sale occurs at the time and place at which the retailer completes its performance with respect to physical delivery of the property. Since the retailer here did not complete its duties with respect to physical delivery until after the unloading was complete, the forklift charges for unloading the merchandise are taxable. 12/5/90.

557.0233 **Freight Charges.** A joint venture purchased lumber from an out-of-state firm for a delivered price, f.o.b. jobsite in this state. The joint venture paid the freight charges which were deducted from the seller's invoice and netted out of reported purchases subject to use tax.

The lumber was sold for a delivered price and the freight charges should not be netted from the measure of tax. The joint venture ordered the lumber f.o.b. jobsite at a price which included the delivery cost. The seller shipped the lumber freight collect and invoiced at the quoted price, including freight, and then netted out the freight because the lumber was shipped freight collect. Inasmuch as the lumber was sold for a delivered price and invoiced at the delivered price with freight netted out, the charge for freight, no matter who paid it or to whom it was paid, was part of the sales price. 10/10/66.

557.0240 **Freight Equalization.** Price adjustments, whether labeled "freight equalization" or otherwise, which amounts are not paid by the purchaser to either the carrier or vendor, are excludable from the measure of sales and use taxes. 1/12/55.

557.0256 **Handling Charge.** A handling charge is subject to tax when it is considered part of a taxable sale of tangible personal property, even if separately stated. If the sale is not subject to sales tax, such as a sale where all items are purchased for resale, the handling charge is likewise not subject to sales tax. If the sale is partly a taxable retail sale and partly a nontaxable sale (resale), the handling charge is prorated between the taxable part of the sale and the nontaxable part of the sale, provided that the handling charge relates to both parts of the sale.

If the handling charge relates solely to the retail sale of the property, it is fully taxable even if part of a mixed invoice. For example, the taxpayer makes a taxable sale of tangible personal property for $50 and provided a nontaxable service for $50 unrelated to the taxable sale. The taxpayer adds a $3 handling charge to the invoices which relates to the handling of the property. The taxable gross receipts would be $53 since the handling charge relates solely to the taxable sale. 9/8/94.

557.0258 **Hostess Party System.** A retailer's merchandise is marketed through a hostess party system. The hostesses take orders and deliver merchandise to the customers. The retailer invoices the hostesses for the merchandise plus a separate shipping charge. This shipping charge is subject to tax under Regulation 1628(a) because delivery is to the retailer's representatives (hostesses) and not directly to the purchasers as required. 12/11/90.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0260 **House Movers.** The moving charges for moving a house sold ''as is and where is'' are not subject to tax where it is clear title to the house was to pass prior to delivery of the house. 12/16/63.

557.0280 **Installation by Seller After Delivery.** Where Seller is under duty to install property after delivery by him, normally title will not be regarded as passing prior to delivery. 6/6/52.

557.0285 **Into-Plane Fees.** Into-plane fees represent a charge to a retailer of aviation fuel by an airport agent to deliver or cause fuel to be delivered directly into a purchaser's aircraft from a storage facility at the airport. The transportation of the fuel is not by facilities of the retailer of the fuel. Also, the retailer is not selling the fuel at a ''delivered price'' as defined in Regulation 1628(b)(1). Rather, the price for the fuel is agreed upon and the separately stated amount representing the charge for the transportation of the fuel directly to the purchaser is added to that price, with any increase or decrease in the actual cost of transportation being borne by or credited to the customer. If the retailer of the fuel separately states such transportation charges in an amount that does not exceed the amount charged by the airport, the fees are for transportation which is excludable from the retailer's taxable gross receipts. 7/3/96.

557.0300 **Leases.** Leases are continuing sales and tax on charges for delivery of leased property to the lessee, where the rental receipts are taxable, is governed by the regulation on delivery charges.

If delivery by the lessor is optional with the lessee, the property is not leased for a delivered price. However, if the delivery is by facilities of the lessor, the charge is subject to the tax if the lease commences after the property is delivered to the lessee.

If delivery is by facilities other than those of the lessor, a separately stated charge is not subject to tax, notwithstanding where or when the lease commences. However, if the property is leased for a delivered price, the charge is taxable unless the delivery occurs after the lease commences. 7/16/68.

557.0302 **Leases.** A company's rental contracts states the following:

> ''Lessee agrees to pay, in addition to the rental charges set forth, a freight charge at the rates stated in the company's published Freight Charge Schedule for equipment of the type leased in effect on the date of delivery and installation of the leased equipment, such charge to be both from and to the company's factory, plus any additional costs of local delivery and handling not included in those rates. In the event of exercise by the lessee of its option to purchase, that portion of the freight charge so paid representing the charge for return of the equipment to the company's facilities shall be refunded to the lessee.''

This contract is not a delivered price contract. The price of the equipment delivered is not fixed by the rental agreement but may fluctuate, up or down, depending upon the fluctuation in the company's Freight Charge Schedule, which presumably reflects changes in actual freight costs. The delivery charge

TRANSPORTATION CHARGES, ETC. (Contd.)

would thus be excludable from the measure of tax assuming that delivery is made by other than the company's facilities. On the same assumption, additional costs of local delivery charges would be excludable from the measure of tax. Tax is properly applicable to return transportation charges since the charges are mandatory under the agreement. There is no specific statutory exclusion for return transportation charges. 1/4/72.

557.0310 **Leases.** A lessor's charges for transporting leased exhibits to exposition or fair sites are not includable in his taxable rental receipts if the transportation occurs during the term of the lease and if the charges are separately stated, reasonable transportation charges from the lessor's place of business or other point from which shipment is made directly to a place specified by the lessee. A lessor's charges for returning property furnished by the lessee for use in the exhibit to the lessee are not includable in his taxable rental receipts. 4/16/70.

557.0320 **Leases.** The application of tax to delivery charges for property transferred under a lease is the same as it is with respect to property sold when the lease is made under circumstances resulting in taxability of rental charges. Such leases are ''continuing sales.'' 5/22/67.

557.0330 **Loading and Handling Charges.** A retailer of coal makes a separate charge for ''loading and handling''. The charge is for transporting the coal from the coal pit to rail cars. A separate bill for freight is issued by the carrier. The loading and handling charges are taxable as services that are part of the sale pursuant to section 6011(b)(1). 3/13/81.

557.0340 **Local Dealer for Out-of-State Manufacturer.** The retail sales price of equipment sold by a California dealer and delivered from his stock includes the transportation charges from the out-of-state manufacturer to the dealer; but separately stated local delivery charges are exempt from tax if the title to the equipment passes to the customer before delivery or if the delivery is made by facilities other than the dealer's facilities. The above rules are applicable to sales where the dealer orders the equipment from out-of-state, has delivery made to himself, and then ships to the customer. But where the dealer has the equipment shipped directly from the out-of-state manufacturer to the customer, the taxable retail sales price does not include separately stated transportation charges which do not exceed the actual charges of the carrier. The rules which apply to equipment are also applicable to the sales of parts. But no use tax applies to freight charges for customer's parts shipped out of state for repairs where the charges are billed to the customer, because the title to replacement or repair parts passes to the customer when installed in the item being repaired, which is prior to delivery. 9/30/64.

557.0360 **Local Dealer of Out-of-State Manufacturer.** Where a California dealer has equipment shipped directly from his midwest vendor-manufacturer's Nevada warehouse to a local customer-buyer, the taxable retail sales price excludes only the separately stated charges from the ''point of shipment,'' i.e., Nevada, even though the dealer's cost of transportation included charges from his midwest manufacturer's factory to the local customer. 2/23/66.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0380 **Local Delivery by Agent.** When an out-of-state firm arranges for a jewelry party at the home of a California host/hostess, with orders taken at the party, and the merchandise is subsequently shipped to the host/hostess who delivers it to the customers, the host/hostess is acting as the seller's agent and title passes upon delivery to purchasers in California. An added charge for handling, postage and insurance is taxable and may not be deducted from the taxable measure. 5/2/55.

557.0400 **Newspaper Delivery Charges.** A newspaper publisher ships the newspapers with its own facilities from the plant where they are manufactured to locations where the newspapers are received by independent contractors, not employees of the publisher, who use their own resources, not facilities of the publisher, to transport the newspapers directly to residences of individual subscribers. Subscribers are presented with the following renewal notices or invoice: ''Name of newspaper, daily and Sunday, $x.xx (per month).'' ''Includes applicable sales tax computed to the nearest mill. $x.xx of your monthly charges is attributable to transportation.'' The amounts attributable to transportation are based on the actual transportation fees paid by the publisher to the independent contractors who deliver the newspapers to the subscribers. Since the actual cost of transporting the newspapers varies among each distinct service area, the publisher separately states a charge to all its customers in a particular geographic area equal to the *lowest cost* of transportation to any of its customers in that area or route.

Since the publisher is selling the newspapers for an agreed price regardless of the amount of the sales price that is allocated to the delivery of the newspaper, and since the publisher does not alter the subscription price of its newspapers to its customers based on the charges that it incurs for delivery, the publisher is regarded as selling its newspapers at a ''delivered price.'' A separately stated charge for transportation is not subject to tax provided:

1. Title to the newspaper passes to the customer prior to the delivery for which the charge is made, e.g., when the independent carrier receives the newspaper for delivery to the customer.

2. The charge is calculated based on the actual costs incurred by the publisher for delivery by the independent carrier rather than on an average monthly basis. For example, the publisher cannot designate a monthly amount for transportation charges on its invoices based on an average of 4.3 weeks per month because the net result would be that some monthly charges are either less than, or in excess of, the actual charges for that particular month (i.e., when the month in question is not 4.3 weeks long). Instead, the billing must be based on the actual cost for that month. If the publisher wishes to use the same figure for each billing cycle, the cycle must be of the same length (e.g., 4.3 weeks) so that the actual cost is the same each billing cycle.

3. The charge does not exceed the actual cost to the publisher of transportation by independent carrier to that customer. Since the publisher wishes to make an identical transportation charge for each customer, that charge cannot exceed the lowest actual cost of transportation to any customer. 11/16/99. (2000-3).

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0420 **Out-of-State Purchases.** Where title to property passes to buyer at an out-of-state point of shipment, the actual freight paid by seller may be excluded from taxable gross receipts.

Where property is shipped from out-of-state point to seller's warehouse in California and thence to the buyer, the only excludable freight charges are those incurred from the California warehouse to the buyer, assuming title passes at that point.

If, in the paragraph above, the buyer picks up the goods at the California warehouse, no exclusion of freight charges may be made.

Where the buyer designates "f.o.b. destination" the freight charges are includable in taxable gross receipts as title passes at destination. 4/7/53.

557.0430 **Packaging, Crating, & Freight Charges.** The entire charge, including any surcharge, for packaging and crating is always included in gross receipts. Separately stated charges for transportation would not be taxable, but only up to the actual transportation charge paid by the retailer to the carrier, provided the requirements of Section 6012(c)(7) are met. 9/9/93.

557.0440 **Passage of Title.** Where customers are given a choice as to the carrier to be employed, understand that they receive title at the seller's plant and agree to assume all risk of loss during transit, title to the goods passes at the time the property is delivered to the carrier, and separately stated transportation charges are deductible, even though the charges to the customer are less than actual cost of transportation under the seller's competitive custom of freight equalization. 12/13/60.

557.0442 **Passage of Title.** When transportation is by facilities of the retailer, a title clause in contemporaneous documents of sale is usually the best evidence of an explicit agreement regarding the passage of title. However, other evidence of an explicit agreement may be acceptable. For example, where the buyer and seller have an ongoing business relationship, a written agreement between them regarding the passage of title on subsequent sales could control. This is so, even though the documents relating to specific subsequent sales may be silent as to title.

Also, if the purchase order states "title passes at time and place of shipment unless otherwise specified", it is sufficient to exclude separately stated transportation charges where shipment is by the facilities of the retailer. This is assuming that the charges are for transportation from the retailer's place of business or other point where shipment was made directly to the purchaser. 12/21/77.

557.0445 **Passage of Title—Delivery by Facilities of Retailer.** To clarify subdivision (b)(2) of Sales and Use Tax Regulation 1628, if the taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board considers this to be proof that there was an explicit agreement under section 2401 of the Commercial Code that title did pass prior to shipment. 6/12/96.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0449 **Passage of Title—Facilities of Retailer.** If a taxpayer has a statement on the sales invoices that title to the goods passes prior to transportation, the Board will consider this to be proof that there was an explicit oral agreement entered into prior to the sale. 8/13/87; 7/10/96.

557.0452 **Pick Up and Delivery—Reupholstered Furniture.** A reupholsterer provides pick-up and delivery service in its own truck in connection with its reupholstering of customer's furniture. Where the reupholster does not require its customers to have the reupholsterer pick up the furniture from the customer, tax would not apply to the reupholsterer's reasonable charge for that pick up service. The reupholsterer should separately state the optional charge on its invoice to its customer. On the other hand, if it is a requirement of the sale (not optional to the customer), it is then considered a ''service that is part of the sale'' and the charge for the pick up service would be subject to sales tax. Where the reupholstered furniture is being delivered back to the customer in the reupholsterer's truck, the charge is taxable unless there is an explicit written agreement executed prior to the delivery that title is to pass to the customer prior to delivery. 7/11/96.

557.0455 **Postage and Handling Charge.** A firm bills a standard ''postage and handling'' charge without regard to how close or far the customer is from the warehouse. In aggregate, it attempts to recover the total cost of transportation, but it does not have the ability to determine transportation costs on any particular item. While under conditions set forth under Regulation 1628(a) the retailer may deduct the actual cost of transportation when it makes a charge for ''postage and handling,'' to be entitled to the exclusion it must retain records showing the actual cost of transportation for each individual transaction. If it fails to do so, the total of such charges is included in the measure of tax. 3/13/97.

557.0460 **Price Adjustments.** If a vendor, to equalize his price with his competitor, separately states that actual freight paid or to be paid to the carrier, and shows the balance of the total charges as the sale price, with title passing at the point of shipment, the latter figure is the measure of the tax, even though it is less than it would be if the vendor did not have to meet his competitor's price. 12/20/54.

557.0465 **Prorated Handling Charge.** Taxpayer prepares individualized diet analysis reports from information submitted by persons in response to a questionnaire requested from the taxpayer. A computer analysis of the dietary information is prepared and bound and returned to the customer, along with a specified number of pamphlets on nutrition. Additional pamphlets are available for a fee. A $2.00 charge is made for postage and handling on the shipment of the analysis report and pamphlets.

The analysis of the dietary information is an exempt service resulting in a report based on customer furnished information even though some tangible personal property is incidentally transferred. The pamphlets furnished with the report are sold and are subject to tax unless exempted for some other reason such as sales in interstate commerce. The measure of tax for these pamphlets is the same for additional pamphlets ordered separately. The postage and handling

TRANSPORTATION CHARGES, ETC. (Contd.)

charge is exempt to the extent of the actual cost of postage, separately stated on the sales document, and the portion of the handling charge pertaining to the report, provided the records support the portion claimed as exempt. 4/3/91.

557.0480 **Pumping Concrete.** Where concrete, discharged from ready-mix trucks is pumped through hoses or pipes to the point of use on the job, the pumping operation is essentially a transportation function, and the charges therefor shall be treated as transportation or delivery charges. 11/2/66.

557.0484 **Purchase of Equipment.** A company purchased equipment from an Italian firm in Italy. The purchase order stated a price FOB Italian port and a price ''CIF Oakland delivery'' for a ''total price CIF Oakland.''

Section 2320 of the Commercial Code defines ''CIF'' to mean the cost of goods and the insurance and freight. The shipping charge was not separately stated. It is, therefore, not necessary to determine whether the contract was for a delivered price or where title was transferred. Tax is due on total contract price which includes the CIF charge. 8/17/92.

557.0490 **Risk of Loss.** The Uniform Commercial Code separated risk of loss from title. Therefore a statement regarding risk of loss is not a statement regarding passage of title. 10/22/90.

557.0508 **Sales of Checks By Banks.** When there is no explicit agreement between the bank and its customer as to when title to the checks passes to the customers, section 2401(2) of the California Commercial Code would be applicable. This section provides that, unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with the physical delivery of the goods. Section 2401(2)(a) provides that, if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment. Since the bank is only required to send the checks to its customers but is not required to deliver the checks to them, title to the checks passes to the customer at the time and place of shipment pursuant to section 2401(2)(a). Therefore, any separately stated charges made by the bank for transportation are not subject to tax. 12/22/70.

557.0520 **Seller as Carrier.** A seller, acting as a carrier of the product he hauls, who retains title to the goods to be delivered, must pay sales tax on the delivery charges as a part of the selling price. 3/16/65.

557.0540 **Segregation or Application of Goods by Seller.** Where there is no real segregation or appropriation of building materials in a seller's warehouse at the time a purchaser's order is placed, and the seller is required to subsequently deliver the goods to the buyer or at a designation job site, title to the goods does not pass until such delivery is made. This being true, transportation charges of the seller for the delivery of such goods prior to passage of title are properly includable in the measure of the sales tax. 2/25/53.

TRANSPORTATION CHARGES, ETC. (Contd.)

557.0562 **Separately Stated Charges—Verbal Contract.** A verbal contract made by telephone in which the amounts of materials, tax on materials, and delivery are allegedly stated separately does not support an exemption for delivery charges when written confirmation and sales invoices are prepared on a lump-sum basis. The written confirmation constitutes a delivered price bid and it supersedes the telephone conversation. 3/20/90.

557.0564 **Shipment from Outside California on Order Placed in California.** A taxpayer having an office in California receives an order from a California buyer. The property ordered is shipped from the taxpayer's out-of-state factory directly to the buyer in California. Shipping charges are separately stated. Tax applies to the shipping charges only if the property is sold for a delivered price or is delivered by the taxpayer's facilities and the sale of the property occurs after shipment. 12/2/93.

557.0570 **Shipment via Warehouse.** A firm selling custom furniture orders merchandise for its clients from around the world. The suppliers ship directly to the customers. The firm pays the carrier and bills the customer the actual freight charges separately on the invoice. In the case of merchandise from a foreign country, the goods are picked up at the dock by a regional carrier and taken to a public warehouse in the firm's home city. The warehouse, which also is a common carrier, notifies the firm and its client and then delivers the goods to the customer. The firm never takes possession or handles the property at any point in the movement. The separately stated transportation charges are excluded from the measure of tax. The fact that more than one carrier is used or a public carrier's warehouse is used as a necessary incident to the transportation does not affect the exclusion as long as the goods were not shipped to the firm's warehouse. 4/4/97.

557.0575 **Standing Order.** A regular customer of a business issues a standing order that the following clause is a part of all purchase orders:

"It is understood and agreed that title passes to buyer at shipping point. Seller to set out freight and deduct before computing sales or use tax."

Invoices issued by the seller did not separately state transportation charges, but did not include tax reimbursement on transportation charges.

The regulation does not require that transportation charges be separately stated on the invoice. The contract between the buyer and the seller clearly provides that title to the property sold passes to the buyer at the point of shipment and requires that transportation charges be set out and deducted and the invoice when read together with the standing order establish a separate statement of transportation charges. Tax does not apply to these transportation charges. 3/17/75.

557.0580 **Stocking or Spreading Wallboard.** Charges made for stocking (spreading) wallboard are not includable in gross receipts without regard to whether the wallboard is delivered to the jobsite by means of common carriers subject to PUC tariff authority or by facilities of the retailer.

TRANSPORTATION CHARGES, ETC. (Contd.)

The spreading of wallboard may be distinguished from the pumping of concrete, which was the subject of the Court of appeals decision in *Tobi Transport, Inc.* v. *State Board of Equalization,* 104 Cal.App.3d 730. Concrete pumping constitutes transportation. It is part of the continuous process of physical delivery. There is a physical difference with respect to wallboard delivery and spreading. The difference is that the wallboard comes to rest—for at least a moment and in many cases for a day or two prior to spreading. Wallboard spreading is a batch process, as opposed to concrete pumping which is a continuous flow process. 4/22/88.

557.0599 **Title Clause.** A statement signed by the customer, prior to delivery, which says "I/We, the customer, are aware that title to the material purchased passes at the seller's plant prior to delivery," is sufficient to meet the requirements in Regulation 1628 (b)(3)(D) that the parties explicitly agree to pass title prior to delivery. 9/28/84.

557.0600 **Title Clause.** The following will serve as a title clause where:

(1) Transportation is by retailer's own facilities;

(2) Transportation charges are separately stated;

(3) It is for transportation from the retailer's place of business or other point from which shipment is made to the purchaser; and

(4) The transportation occurs after the sale of the property is made to the purchaser.

"Title to the materials shall pass directly from the seller to the buyer at the shipping point prior to shipment. Seller shall set out and deduct freight charges prior to computing sales or use tax."

The required title-passage clause must appear on the confirmation, purchase order or other document evidencing passage of title prior to shipment. 1/28/91.

557.0602 **Title Clause on a Delivery Ticket.** A taxpayer sells a substance which is used to seal oil wells to prevent them from seeping. The taxpayer delivers the substance in its own trucks. The taxpayer's sales invoices, which are issued after the substance is delivered, separately state the transportation charges but do not contain a title clause. However, the taxpayer issues each of its customers a delivery ticket similar to a bill of lading which has a statement which reads: "Title to goods passes to customer at warehouse prior to shipment." The purchaser generally sees the delivery ticket at the time the purchaser orders the substance.

A delivery ticket is considered a part of the documentation for a sale and, therefore, a title clause on a delivery ticket is just as effective to express the intent of the parties as a title clause on an invoice. Thus, the separately stated transportation charges are not subject to the sales tax. 6/23/94.

557.0603 **Title Clause on Shipping Document.** Taxpayer sells small copiers, plotters, and consumables to end users, mainly within a 30-mile radius of its warehouse. The customers have a choice for transportation from the taxpayer's warehouse to their location. They can ask the taxpayer to ship by a third-party

TRANSPORTATION CHARGES, ETC. (Contd.)

carrier, pick up the property themselves, or have the taxpayer deliver the product in its own truck. If the taxpayer delivers, a separate nominal charge is added on the invoice. Transportation is to occur after the sale of the property is made to the purchaser and is separately stated on the delivery invoice. The taxpayer asks if any or all of the following four clauses on the shipping document would be acceptable to the Board as a title clause for purposes of excluding its transportation charges from sales tax.

(1) Title: passes FOB warehouse.

(2) Title: passes prior to shipment.

(3) Title: to buyer FOB warehouse.

(4) Title: to buyer prior to shipment.

Clause 2 and Clause 4 will accomplish taxpayer's purpose. Only Clause 2 and Clause 4 establish that title passes to buyer when delivery is made by taxpayer's own trucks. The FOB clauses are sufficient to pass title when delivery is by a third-party carrier, but they are not sufficient when delivery is by the taxpayer's own trucks. In order to accurately reflect the agreement between the taxpayer and its buyers that title is to pass to the buyer prior to shipment in all cases, the taxpayer should use Clause 2 or Clause 4. Clause 4 is preferable because it is more explicit. 5/15/97.

557.0605 **Title Passing At The Time of Transaction.** A contract containing the statement ''title passing at the time of transaction'' is ambiguous. When is the ''time of transaction?'' At the time the order is placed? At the time payment is made? At delivery? If the contract does not contain any other statements regarding title, and delivery is by facilities of the retailer, the transportation charges are included in the retailer's gross receipts and subject to sales tax. 10/22/90.

557.0611 **Transfer of Title—Insurance Clause.** A seller's insurance coverage provides that a sale occurs when the customer pays for the property. Notwithstanding the treatment of a sale for insurance purposes, title does not pass and the sale does not occur until the seller completes delivery in its own vehicles, unless the contract of sale explicitly passes title prior to the delivery. Since the contract does not pass title prior to delivery, the delivery charges are subject to tax. 5/4/94.

557.0615 **Transportation Charges.** The buyer's purchase order for imported steel stated, ''Shipping point of origin itemized freight charges. Dock Oakland/Alameda, All Duties Paid.'' The seller's invoice to the buyer stated, ''Including ocean freight and other charges.'' The ocean freight was shipped by seller from a foreign port under a bill of lading consigned to the order of seller, notice to be given to seller. The seller's customs agent handled the final release from the Alameda terminal under a customs permit. The customs agent prepared a shipping order recognizing the custom agent as the shipper and the buyer as the consignee. The purchaser picked up the goods at the dock.

TRANSPORTATION CHARGES, ETC. (Contd.)

Since the purchase order required shipment to Oakland/Alameda terminal, which is not owned or controlled by the retailer or its agent, shipment is not considered to have been to the seller or its agent.

In this instance, the seller had the goods shipped to its order, which means that the bill of lading in seller's hands is a document of title. That document vests the seller with the right to direct the carrier to deliver the goods to the person specified. It is not equivalent to a delivery of goods to the seller. In fact, the seller, through its customs agent, ordered the goods delivered to the buyer, and that was the only physical delivery which the carrier made. Thus, transportation charges are excludable from the measure of tax. 11/16/72.

557.0616 **Transportation Charges.** Under the following conditions, the delivery of rock and gravel was considered to have been made in facilities other than facilities of the retailer:

The drivers all owned their own tractors and leased the trailers from the retailer. The drivers were not prohibited from hauling for others. The drivers were paid once a month, based on the weight of the loads they hauled. Each haul was written up on a separate invoice. There was no employee withholding, nor were the drivers on the payroll. There was no direction from the retailer regarding how to do the job. All tractor repairs and fuel were paid by the drivers. There was no evidence of any employee benefits. 11/4/80.

557.0620 **Transportation to Retailer's Place of Business.** The exemption for separately stated transportation charges is limited to charges for the "final transportation" of property to the purchaser or to a place specified by the purchaser. Only transportation terminating in a sale and delivery qualify as final transportation. A retailer may not deduct the cost of transportation incurred in the shipment of goods to him for the purpose of making a subsequent sale and delivery even though reimbursement for this cost is separately billed to his customer. 3/17/66.

557.0640 **Truckers Employed by Retailer.** Transportation by truckers in the retailer's employment is transportation by facilities of the retailer rather than by independent carrier. A trucker is "in the company's employ" and not an independent carrier if he received employee benefits and is treated as an employee for purposes of payroll deductions and taxes. 12/2/64.

557.0648 **Trusses.** A company manufactures and sells trusses to general contractors who build custom homes. The contractors provide plans and specifications and the company assembles the trusses. There are two types of trusses: (1) less than 25 feet across which are banded together and dropped off at the customer's job site, and (2) larger trusses which have to be delivered to the job site in the company's truck and then the truck's boom is used to hold the trusses in place while the contractor's construction crew secures the trusses to the support beam. A transportation fee of $100 is charged to each contractor. For the larger trusses, the boom operator (truck driver) holds the trusses in place while the construction crew secures the trusses.

TRANSPORTATION CHARGES, ETC. (Contd.)

There are no contracts which require the company to furnish and install the trusses. The contract only provides that the trusses will be delivered for a $100 fee. There is no indication that the company must install the trusses. The contractor is charged $100 for delivery of the trusses but there is no indication that the driver of the truck who operates the boom has any unique expertise relating to the attachment of the trusses. In the present case, any boom operator could be hired to raise the trusses so that the crew could attach the trusses to the support beams. It is concluded that the company is not a construction contractor because it is not, pursuant to a construction contract, required to furnish and install tangible personal property.

There is no contract which calls for title to pass prior to delivery, so unless the trusses are realty at the time title passes, the transportation charges are taxable. The boom operator lifts the trusses up to the support beams so the construction crew can manipulate the trusses into place and secure them to the support beams. Once this crew takes control of the trusses, delivery takes place and title passes. At this point, the trusses are not realty. It is concluded that title to the trusses passes before the trusses become affixed to real property and that the transportation charges are subject to tax. Even if title did pass after the trusses were affixed, the tax result would be the same. It is well established that for the purpose of California's sales tax, the sales of personal property is nonetheless subject to sales tax even though affixed to the buyer's land. (*United States Line, Inc.* v. *State Board of Equalization* (1986) 182 Cal.App.3d 529.) 4/29/91.

557.0660 **United Parcel Deliveries.** Tax does not apply to separately stated delivery charges for transportation by United Parcel which qualifies as transportation by other than facilities of the retailer. 12/7/64.

557.0667 **United Parcel Service Stamp.** Where a retailer's invoices state that freight and tax are included in the lump sum selling price, the United Parcel Service stamp showing its charge to the retailer on the package is regarded as a separately stated transportation charge. Accordingly, the amount shown on the stamp is excluded from tax. 9/04/91.

557.0680 **Unloading.** Where a charge for unloading property is made, and title to the property does not pass until it is unloaded, the charge should be handled the same as a charge for transportation prior to delivery and is includable in taxable gross receipts. 4/22/54.

557.0685 **Unloading and Stacking of Hay.** Separately stated charges for unloading and stacking hay are part of transportation and taxable when the transportation occurs prior to the sale. Absent a specific agreement with respect to passage of title, the sale (title transfer) occurs upon completion of the stacking activity. 3/24/98. (M99–2).

557.0690 **Use of Average Shipping Costs.** A retailer requires payment from the customer prior to shipping the goods sold. It charges a flat fee of $3.00 for shipping and separately states it on the invoice of sale. The actual cost of shipping is not known until the order is filled and the property shipped. Under the

TRANSPORTATION CHARGES, ETC. (Contd.)

circumstances, an average cost of shipping cannot be used to calculate the exclusion from tax for transportation charges. Only the actual cost of transportation on each order may be excluded from tax under section 6011(c)(7) and 6012(c)(7). 4/21/89.

557.0700 **Water—Service Charges.** Charges for delivering water by tank truck operated by the seller even though designated as service charges are taxable as receipts from the sale of water without any deduction on account of delivery cost, unless there is a separate statement of the delivery charge and title to the water passes before the transportation takes place. 4/26/65.

557.0720 **"Will Call."** Where parts sold by a California dealer to a local purchaser are shipped via air freight from out-of-state via "will call," such freight charges cannot be excluded from the measure of tax if the parts were consigned to the dealer and later picked up by or delivered to the customer. But if the parts were consigned to the customer and delivered to him by a common carrier without assistance or storage by the dealer, then no tax is due on the air freight charges. 9/18/64.

TRANSPORTATION EQUIPMENT
Lease of, see Leases of Mobile Transportation Equipment.

TRUCKS AND TRAILERS
See Vehicles; Vehicles, Vessels, and Aircraft.

TRUSTEES IN BANKRUPTCY
Sales by, use tax, see Court Ordered Sales, Foreclosures and Repossessions. Copy Pages K402 to K421 (MM).

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560.0000 UNITED STATES, SALE BY—"SURPLUS PROPERTY"
Sales to the United States, see Sales to the United States and its Instrumentalities.

560.0080 **Coast Guard Auxiliary—Instruction Pamphlets.** Sales of instruction pamphlets by the Coast Guard Auxiliary are not subject to tax. In selling the pamphlets the Auxiliary is carrying out the purposes set forth in Title 14 of the U.S. Code and, therefore, at least to that extent is acting as an instrumentality of the United States Government. 3/19/59.

560.0090 **Gold and Silver Olympic Coins.** Sales to the public by depository financial institutions (banks or savings and loans) of gold and silver Olympic coins, which are legal tender of the United States, under consignment agreements with the United States Mint are sales by the United States and are not subject to either the sales or use tax under sections 6352 and 6402 respectively, notwithstanding the fact that the financial institutions, as consignees, had power to pass title. The exemption for sales by the United States takes precedence over the general rule for consignees for the following factors:

(1) Title to the coins remains with the United States, and the institutions hold the coins in trust for the United States.

(2) The United States sets the retail selling price and the institutions have no authority to raise or lower the price.

(3) The United States has not authorized the institutions to collect tax or tax reimbursement from the customers.

(4) The institutions make no profit on the transactions, retaining only a discount to cover the costs of sales.

(5) All unsold coins must be returned to the United States by a specified date, and the institutions bear the risk of loss. 6/6/84.

560.0100 **Incorporated Agencies.** Sales at auction by an auctioneer on behalf of an incorporated agency of the federal government are subject to use tax. This is true even though the auctioneer is supplied with the incorporated agency's tax exempt number.

Revenue and Taxation Code Section 6402 provides an exemption from payment of use tax for purchases made ''from any unincorporated agency or instrumentality of the United States''. There is no exemption for purchases from an incorporated agency of the United States. Thus, an auctioneer is required to collect use tax on its sales of personal property on behalf of incorporated agencies of the federal government such as the Resolution Trust Company (RTC) and the Federal Deposit Insurance Corp. (FDIC) without regard to its ''tax exempt'' status when the RTC and FDIC are acting in the role of a conservator.

When acting as a receiver, the RTC and FDIC are immune from all state and local taxation. State and local taxing authorities may only tax the RTC and FDIC if they consent to such taxation, by waiver of the immunity. Congress has expressly waived this immunity for state and local ad valorem real property taxes. 12/20/90; 2/1/93.

UNITED STATES, SALE BY, ETC. (Contd.)

560.0120 **Public Housing Administration.** The Public Housing Administration is an incorporated instrumentality of the United States. Accordingly, a purchase from the Public Housing Administration is subject to use tax whether surplus property or not.

Sales of buildings "in place" would be exempt as a sale of real property provided the purchaser is to use the building at its existing location under a lease. Any equipment included would, of course, be taxable. 1/24/56.

560.0140 **Red Cross.** The American Red Cross is exempt from payment of sales tax on sales made by it. However, use tax must be collected by the Red Cross from purchases if it makes a sufficient number of sales to be classified as a retailer. Section 6019 provides that a corporation making more than two retail sales during any 12-month period shall be considered a retailer. 1/2/63.

560.0170 **Sale to Enforce Federal Tax Liens.** The United States is not the owner of an auto seized and sold pursuant to section 6335 of the Internal Revenue Code. The purchaser at such a sale receives only the right, title and interest of the Federal tax debtor. The United States acts only as a lienor enforcing a lien on the property seized. The United States is not regarded as the seller of the property, therefore, the buyer is liable for use tax on the vehicle at the time it is registered at the Department of Motor Vehicles. 12/13/71.

560.0173 **Sale by Federal Deposit Insurance Corporation.** The sale of tangible personal property by the Federal Deposit Insurance Corporation (FDIC) is exempt from sales tax. The use of the property purchased from the FDIC is not, however, exempt from use tax. 7/22/94.

560.0174 **Sales of Used Cars by General Services Administration (GSA).** Under 40 U.S.C. section 484(c), any executive agency authorized by GSA to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer upon such terms as GSA deems proper. 40 U.S.C. section 481(c) provides that in acquiring personal property, any executive agency, pursuant to certain regulations, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or part payment for the property acquired.

It is the position of the Board that property purchased from GSA under 40 U.S.C. section 484(c), (surplus property), is subject to use tax but property purchased under 40 U.S.C. section 481(c) is exempt. Sales to the public of vehicles from the federal motor vehicle pools are sold pursuant to 40 U.S.C. section 484(c) and are, therefore, subject to use tax. 3/11/92.

560.0180 **Surplus Property.** Where a vessel is purchased from the Maritime Commission as a disposal agency after such vessel had been declared as surplus property by the owning agency, the purchase price is subject to use tax. 9/4/53.

560.0200 **Surplus Property.** The General Services Administration has succeeded to the functions of the Surplus Property Board and property declared to be "excess" is surplus property as defined in Section 6402. 1/11/56.

UNITED STATES, SALE BY, ETC. (Contd.)

560.0235 **Tax Liability of F.D.I.C. Operated Banks.** Federal law exempts the Federal Deposit Insurance Corporation (F.D.I.C.) from all state and local taxes, except ad valorem property taxes, and from all penalties or fines. However, where the F.D.I.C. acts as a receiver for a bank, it is required to pay all valid obligations of the insured depository institution. Therefore, it is proper for the Board to accept tax payments from the F.D.I.C. on continuing leases which predate the receivership. These payments represent the continuing obligation of the bank to collect and remit use tax on the leases, and are not a tax imposed on the F.D.I.C. Penalties and interest for late filing or payments are not authorized. 8/17/93.

560.0245 **U.S. Customs Service.** The sale by the U.S. Customs Service of a vessel forfeited to the U.S. Government is not subject to use tax. The U.S. Customs Service is an unincorporated agency of the United States and the property was not ''surplus property'' nor ''contractor inventory'', as discussed in Revenue and Taxation Code Section 6402. 9/29/93.

560.0260 **Vessels—Sale by a U.S. Marshal.** The sale of a yacht, by a U.S. Marshal, pursuant to an order of a federal court in an admiralty matter is a sale by an instrumentality of the United States. The purchaser of the yacht is exempt from use tax liability under Sections 6402 of the Sales and Use Tax Law. 12/2/65.

565.0000 UNITED STATES CONTRACTORS
See Construction Contractors; "War Material" Contractors.

(a) IN GENERAL

565.0025 **Construction Contracts.** The Lockheed and Aerospace court cases only pertain to United States supply contracts and not to construction contracts. Accordingly, Revenue and Taxation Code section 6007.5 and 6384 are valid and controlling with respect to the application of tax to United States Construction contracts. 2/21/92.

565.0030 **Contract Provision.** If a provision is required by law to be included in a United States construction contract, that provision must be regarded as part of that contract regardless of whether it is incorporated by written reference. 12/30/91.

565.0038 **"Delivery" Defined in United States Construction Contracts.** In our opinion, the term ''delivery'', as used in United States construction contracts, refers to receipt by the person to whom the property is shipped. We believe that the usual meaning of this term in the context of the vendor's delivery is that delivery occurs upon receipt by the contractor of physical possession of the delivered product.

Accordingly, a construction contractor would owe use tax on purchases delivered to it in California from out-of-state firms notwithstanding that the contract provides for ''title to material purchased from a vendor shall pass to and vest in the government upon the vendor's delivery of such material . . .'' While under Uniform Commercial Code title passes from the vendor to the contractor

UNITED STATES CONTRACTORS (Contd.)

upon delivery to the carrier, the ''delivery'' contemplated by the contract with the United States is the physical possession by the contractor. Thus title did not pass to the United States outside of California. Under Regulation 1521(b)(1)(A) the contractor is the consumer of materials and fixtures which it furnishes under a construction contract. 12/30/91.

565.0040 **Distinction Between Federal Government Construction Contracts and Non-Government Construction Contracts, in Applicability of Tax.** In the case of contracts with the Federal Government, the application of the tax differs from that in the case of a contractor with a private person or corporation in that, pursuant to express provisions of law, the sale to the contractor of any tangible personal property, whether ''materials'' or ''fixtures,'' is the taxable sale measured by the gross receipts from that sale. Even if the contractor fabricates ''fixtures'' from raw materials purchased by him, the tax applies not to the fair retail value of the fabricated fixtures, as in the case of non-Government contracts, but applies to the sale price of the raw material to the contractor. 2/2/51.

565.0060 **Job Corps Centers.** Effective October 16, 1986, pursuant to 29 USCA 1707, a sale of tangible personal property to or by, or purchase of tangible personal property by, the operator of a Job Corps Center, program, or activity under contract with the U.S. Department of Labor is exempt from sales or use tax. Such exemption applies even though the tangible personal property will be used to improve real property within Sections 6007.5 and 6384. Such exemption is not retroactive. For periods prior to October 16, 1986, sales by a Job Corps Center, program, or activity were taxable, and sales to or purchases by a Job Corps Center, program or activity were taxable unless title to the tangible personal property passed from the Job Corps Center, program, or activity to the United States prior to use, and the tangible personal property was not used in improving real property. 6/12/87.

565.0075 **Materials Paid For By Federal Funds.** A United States ''captive'' contractor is the consumer of materials that it purchases to carry out improvements to realty in its contracts with the United States, not withstanding the fact that the contractor uses federal funds to pay its vendors and it cannot perform other work without federal approval. 8/4/92.

565.0120 **Overhead Expense of Related Entity.** A related entity (A) which has no government contracts is related to entity (B) which does. Both share overhead expenses. Since entity (A) is a separate legal entity and not a party to entity (B)'s contracts, none of entity (A)'s overhead expenses may be allocated to entity (B)'s contracts. 8/4/92.

565.0160 **Resale Certificates,** properly given by vendee where latter resells to United States, except as to property used in performing contracts to construct improvements. 12/1/50.

565.0165 **Resale Certificates vs. Exemption Certificates.** Federal contractors may not purchase property extax under *Aerospace* v. *State Board of Equalization* (1990), 218 Cal.App.3d 1300 by issuing the vendor an exemption certificate. The

UNITED STATES CONTRACTORS (Contd.)

relevant exemption is for sales of tangible personal property to the United States, not for sales of tangible personal property to United States supply contractors. The Aerospace decision related only to whether certain property was regarded as resold to the United States prior to the contractor's use or instead was used by the contractor. If the former, the contractor is entitled to purchase the property extax for resale, and the sale to the United States is exempt. If the latter, the sale to the contractor is taxable. When a contractor's supply contract with the United States comes within the Aerospace rule (i.e., the contractor is regarded as selling property in the form of tangible personal property to the United States prior to any use) it may purchase such property extax for resale by issuing the vendor a resale certificate. If however, title to the property does not pass to the United States prior to the contractor's use, the contractor may not purchase the property extax for resale. 3/31/94.

565.0175 **Safety Shoes.** A vendor sells safety shoes for use by employees of a U.S. supply contractor. The contractor provides the employees an allowance for the shoes. Any amount in excess of the allowance is withheld from employee's pay. Some of the contractor's contracts with the United States have provisions that title to property used by the contractor to fulfill the contract, passes to the United States prior to any use by the contractor.

The fact that employees reimburse the contractor for a portion of the cost of the shoes does not establish that the contractor purchased the shoes for resale. But for its contracts with the United States, the contractor would be the consumer of the shoes and the shoe vendor would owe sales tax on its sales to the contractor or use tax would apply to the contractor's use. However, the contractor is regarded as having purchased for resale those shoes which are allocated to government contracts containing the title passage provisions. With respect to all other shoes, tax applies to the sale to, or use by, the contractor. 8/20/93.

565.0177 **Sales to the Canadian Government.** A supplier, who is a United States contractor, is selling spare parts in California to Canada's Department of National Defense. The parts are stored in California for possible use in equipment either in California or in Canada.

Since the supplier transfers possession of the property to the purchaser in California, the sale takes place in the state. A person is a "United States contractor" only with respect to its performance of contracts with the United States. Since the United States is not a party to this contract, it is irrelevant whether the supplier is a United States contractor. Also, there is no specific exemption for sales to the Canadian government. Thus, the sale in California of spare parts to Canada is subject to tax. 12/2/92.

565.0178 **Sales and Construction Contracts.** Part of the Federal Acquisition Regulation (FAR) title clause 52.245.5 pertains to the time of passage of title to the government and is interpreted to apply to items sold to the government. In accordance with its provisions, with respect to the purchases of items other than fixtures and materials, title passes to the government upon the vendor's delivery to the contractor if the item is a direct item of cost for which the contractor is

entitled to be reimbursed. Title to all other property passes at the time the property is committed to contract performance or reimbursement by government, whichever occurs first. Therefore, if the contractor makes any functional use of the property prior to passage of title to the government, the contractor must pay use tax measured by its purchase price of the property. Its subsequent sale of such property to the government will be exempt. 4/19/91; 4/13/93.

565.0180 **Severability of Contract.** Tax cannot be legitimately avoided by the device of splitting up what is essentially a contract to improve real property into a contract for the sale of the materials and into a contract for the installation or application of those materials. If at the time of ordering the material it is the intention of the parties that the supplier shall also put it in place, a contract for the improvement of real property is involved and the provisions of Section 6384 govern. 10/15/51.

565.0183 **Supply Contract.** A contract with the U.S. Government at a military facility has three basic portions. The first portion includes providing architectural and engineering services. The second portion includes construction work consisting of site excavation, utilities, and foundation work. The third portion involves the leasing of a modular, prefabricated building that comes under the authority of the Department of Housing.

The tax application to the three portions of the contract is as follows:

(1) Neither sales tax nor use tax applies to the architectural and engineering fees.

(2) With respect to site improvements, contractors are the consumers of all fixtures and materials incorporated into site improvements. Thus sales tax or use tax applies to purchases made by the contractor or to subcontractors which are incorporated into site improvements. (Regulation 1521).

(3) Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of House and Community Development, are tangible personal property even though they may be connected to plumbing and utilities. Neither sales tax nor use tax applies to the sale or lease of such property to the federal government. (Regulation 1521(c)(3) and Regulation 1614). Also, the contractor's or subcontractor's charge for performing work on the modular building, such as providing and installing the lights in the building, would not be subject to the tax because the materials become a part of the tangible personal property (building) sold or leased to the federal government. 12/7/90.

565.0184 **Title Passage Clauses.** Tangible personal property purchased pursuant to a U.S. government nonconstruction contract, may or may not be exempt from sales tax as a sale for resale. The determinative factors are the title passage clauses in the individual contracts. Generally, if the contract provides that title passes to the government before the contractor makes any use of the property, the property may be purchased under a resale certificate. However, some contracts may also include provisions that the government will not take title to specified

property such as computer software, or to certain items costing less than a specified amount. Such items should not be purchased under resale certificate. 5/12/89.

565.0185 **U.S. Construction Contracts.** Pursuant to Regulation 1521(b)(1), construction contractors are the consumers of materials and fixtures which they furnish and install and the retailers of machinery and equipment which they furnish in performing contracts with the United States. The contractor's liability for tax on materials and fixtures cannot be avoided by contract wording alleging that these items are for resale to the United States. 3/5/90.

565.0190 **U.S. Government Contractor.** A Department of Defense contractor is not exempt from tax because it is a United States contractor. Tax applies to the sale of property to the contractor that the contractor uses in the performance of contracts with the United States. If, however, the contract with the United States has an explicit provision that passes title to certain property to the United States prior to any use of the property by the contractor, then the contractor may purchase that property ex-tax for resale by issuing a timely and valid resale certificate to its vendors. 12/2/92.

565.0195 **Uninterruptible Power Supply System (U.P.S.).** A U.P.S. system installed at an Air Force Base with backup generators that provide electric power for the military base operation is equivalent to a generator. Since the U.P.S. is essential to the real property as opposed to being used, for example, in a manufacturing process, it is classified as a fixture rather than machinery and equipment under Regulation 1521. Also, if the conduit and wiring are incorporated as part of the U.P.S. in such a way that they become an integral part of the U.P.S., they take on the same characteristics, i.e., fixtures. Otherwise, they are considered materials. In either case, the contractor is considered the consumer of the conduit and wiring as well as the fixtures (the U.P.S.) and, as such, the sale to the contractor is subject to tax. 1/18/94.

(b) ''IMPROVEMENTS ON OR TO REAL PROPERTY''

565.0200 **Cement.** Cement purchased by a contractor with the United States to be used in laying foundation for machinery to be bolted thereon (under contract with clause passing title immediately to the U.S.), sale of, is taxable, as it is used in improving realty in United States Contract. 5/9/52.

565.0240 **Cooler Units.** Cooler units are integral parts of systems composed of ducts and other material which comprise air-conditioning systems for buildings to which they are attached. As such, the units are ''fixtures'' as in Regulation 1521. 3/12/57; 7/22/81.

565.0248 **Device To Raise and Lower Causeway.** A device used to raise and lower a portion of a causeway to allow ships to pass underneath is classified as a fixture and not machinery and equipment. 3/19/84.

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565.0255 **Dry Dock.** Work done for the United States to repair a dry dock which is attached to a pier and connected to electrical, water and compressed air lines is a contract to repair real property. Under Regulation 1521 the contractor is the consumer of materials and fixtures supplied in the course of the repair. 1/19/90.

565.0256 **Dry Dock.** Work done for the United States to repair a dry dock which is attached to a pier and connected to electrical, water and compressed air lines is a contract to repair real property. Under Regulation 1521 the contractor is the consumer of materials and fixtures supplied in the course of the repair. 12/5/89.

565.0260 **Drydock Floodgate.** Drydock floodgate is an integral part of a drydock which constitutes an improvement to real property. Tax applies to the sales price of the fabricated floodgate to the contractor performing the construction of a naval drydock to a United States Government contract. 1/29/69.

565.0265 **Dust Control Systems.** A dust control system designed to protect the environment in a building by removing dust particles from the air is an improvement to realty, and not machinery or equipment, where the dust collector sits on a platform attached to the ground by lag bolts, and ducts extend from the collector through openings in the walls of the building to the locations from which dust is collected. 1/9/79.

565.0270 **Electrical Transmission and Distribution Lines.** Electrical transmission and distribution lines within the meaning of Section 6016.5 are, on and after the effective date of that section, improvements to real property. They may not be treated as ''machinery and equipment'' under Regulation 1521, with a resulting exemption for a contractor who installs them under a contract with the United States, whether or not they are used to power machinery and equipment. 5/29/73; 7/22/81.

565.0276 **Federal Credit Unions.** Construction contracts performed for federal credit unions are not treated as U.S. government contracts pursuant to section 6384 because credit unions are not the United States. Rather, they are incorporated federal instrumentalities not wholly owned by the United States. Construction contracts performed for federal credit unions are treated as any other construction contracts, i.e., the contractor is the retailer of fixtures and the consumer of materials. However, since Regulation 1614(a)(4) specifically exempts from the tax sales to federal credit unions, the contractor should not collect sales tax reimbursement nor report such sales of fixtures as taxable. The sales of materials to the contractor are properly subject to tax as the contractor is the consumer thereof. 4/11/90.

565.0280 **Fire Alarm Systems.** Exterior fire alarms systems are improvements to real property. 4/14/66.

565.0288 **Fuel Cell.** A contract for the installation of an experimental fuel cell as an adjunct of a plant which generates process steam and electricity is a construction contract. Even though there is a possibility that the fuel cell will be removed at the conclusion of a test period, the fuel cell is a fixture and the contractor is the retailer.

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If the contract is with the U.S. government, the contractor is regarded as the consumer of the fuel cell and the sale to the contractor or use of it by the contractor is subject to tax. 3/29/95.

565.0290 **Heat Exchangers.** Hot water generator tanks (heat exchangers) and expansion tanks installed at an Air Force Base pursuant to a contract with the U.S. Government are fixtures, not machinery and equipment. The heat exchanger units are a type of water heater used in conjunction with steam-producing boilers to conduct heat from steam inside coils to the water.

Water heaters are considered essential to, and accessory to, buildings and structures. At least since the revision of Regulation 1521, effective April 1, 1976, affixed water heaters of all types which are connected to water systems have been classified as fixtures, not machinery and equipment, regardless of whether they provide hot water for housekeeping, creature comfort, manufacturing, or service functions. 5/10/79.

565.0340 **Modular Anechoic Chamber Units.** Anechoic chamber units, which are radio frequency-shielded chambers, assembled from prefabricated panels and bolted together and to the floor of an existing building, are ''materials'' since a chamber is not ''readily removable as a unit'' nor ''installed for the purpose of performing a manufacturing operation.'' 11/12/65.

565.0380 **Open Hearth Furnaces.** Brick and other material used in repairing the linings of open hearth furnaces are ''materials.'' 10/4/56.

565.0400 **Paint Spray Booths and Built-in Floor Scales.** Paint spray booths installed in sections and bolted to the floor, adapted to the structure itself for the specific purpose of a special type of painting, constitute ''fixtures.''

A five ton built-in floor dial floor scale is regarded as a material or fixture rather than machinery and equipment.

Sales tax applies to the sale to the contractor of parts and materials entering into the paint spray booths and scales, or fabricated parts therefor, or, in the case of the scale, the entire scale. 4/24/53.

565.0420 **Pipe Line.** A subcontractor who fabricates and lays reinforced concrete pipe, including grading of the trench, mortaring of pipe joints, placing the sections, pointing completed joints and testing of the line, will be regarded as the consumer of the materials used in the performance of the contract. Tax applies to the sale of such materials to the subcontractor. 4/23/53.

565.0440 **Pipelines.** Pipelines installed along the shoreline and out to a pier for purposes of supplying marine vessels with fuel and water constitute improvements to realty. Similarly, pipes installed as part of a fueling system for jet bombers which extend from storage tanks to day tanks are improvements to realty. 10/31/67; 11/7/67; 6/13/79.

565.0460 **Pneumatic Lifts.** Pneumatic lifts are considered ''improvements on or to real property'' and are not machinery and equipment. 5/24/55.

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565.0500 **Pumps.** Deep well water pumps used to furnish water for a government game refuge are improvements to realty under Section 6384 of the law. 5/24/65.

565.0520 **Repairing Real Property.** Sales of tangible personal property to contractors for use in repairing, reconditioning, maintaining, or improving a housing project owned by the Federal Housing Administration are subject to sales tax, pursuant to Sections 6007.5 and 6384 of the Revenue and Taxation Code, as sales of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the United States for the construction of improvements on or to real property in this state. 7/26/67.

565.0540 **Road Oil.** The application of road oil to logging roads even though it only lasts for periods ranging from three to five months, constitutes an improvement to realty, and therefore the sale of road oil to a contractor for use in construction contracts with the U.S. Government is a taxable sale. 12/7/61.

565.0580 **Sand Dredging Facility.** A contractor entered into an agreement with the United States Government to provide a sand bypassing facility plant. The plant is trailer mounted on a mobile jack-up barge and includes diesel engines, pumps, motor control and monitoring system, and crane, complete with submerged pipelines, jet pumps, booster pumps, a fuel system and discharge point piping. The plant is designed to be moved within a given area and after two years the barge mounted equipment will be removed. The barge and the equipment installed thereon are not improvements to realty; however, the submerged pipelines are improvements to realty. As such, the contract for the barge and attached equipment is an exempt sale of machinery and equipment to the United States, while the contractor is the consumer of the submerged pipeline. 1/19/90.

565.0581 **Sand Dredging Facility.** A contractor entered into an agreement to provide a sand bypassing facility plant which is a trailer mounted on a mobile jack-up barge and includes diesel engines, pumps, motor control and monitor system, crane complete with submerged pipelines, jet pumps, booster pump, fuel system and discharge point piping. It is designed to be moved within a given area and after two years the barge mounted equipment will be removed. The barge and the equipment installed thereon are not improvements to realty. The submerged pipelines are improvements to realty. The contract for the barge and attached equipment is an exempt sale to the United States. The contractor is the consumer of the submerged pipeline. 12/5/89.

565.0600 **Screenline Equipment.** Screenline equipment furnished and installed in premises leased by the Federal Government for post office facilities, constitutes ‘‘fixtures’’ rather than machinery and equipment, and the sale thereof to the contractor is taxable as it is used in the performance of a contract to improve real property. The measure of the tax is the price paid by the contractor for the material, exclusive of installation costs, markup or fabrication costs of the contractor. 3/18/57.

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565.0620 **Sprinkler System.** The installation of an automatic sprinkler protection system for United States constitutes the construction of an improvement to realty and tax therefore applies to sale to contractor of materials and supplies. 8/20/51.

565.0626 **Telephone Cable Installed in a Building—U.S. Government Contract.** A taxpayer installs telephone cable to connect PBX equipment in a building to the exterior street line. The cable is pulled or laid in existing ducts, conduits, raceways, plenums, or surface mounts between buildings in the same complex, between floors within a building, or between instruments and their common equipment. The type of installation permits removal without disturbing the building structure. The work performed constitutes the performance of a construction contract. This type cable becomes a part of the building and is a fixture. The mere fact that it can be removed without material damage is not determinative. The cable is intended to remain in place and would not be replaced often. 4/19/94.

565.0628 **Title Clause.** Generally, U.S. contractors are consumers of materials and fixtures used in the performance of contract with the United States for the construction of improvements to real property in this state. There are certain circumstances in which the inclusion of a specific contract provision may allow a contractor to avoid tax on materials and fixtures purchased by the contractor out of this state.

On April 1, 1984, the U.S. government adopted the Federal Acquisition Regulation (FAR) which replaced other acquisition regulations commonly referred to as ASPR, FPRS and DAR.

FAR provision 45.106(f)(1) requires, with certain exceptions, the insertion of clause 52.245–5, Government, Property, in contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated. Subsection (c) of 52.245–5 states:

''(2) Title to all property purchased by the contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.''

''(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.''

Only property coming within subsection (c)(2) would pass title to the Government upon delivery to the Contractor. If that delivery takes place at an out-of-state point, the subsequent use of the property on a contract to improve realty in California would not be taxable, as title would have passed to the U.S.

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before the property entered this state. If the property involved comes within subsection (c)(3), the property would be subject to tax. 7/5/89.

565.0635 **Title Clause—U.S. Government Contract.** A firm has a contract to build a geothermal pumping and gravity head conversion system for a private party. The private party holds a prime contract with the United States to build and operate an experimental research program. The contract between the firm and the private party provides that title to the property involved in the contract shall pass to and rest in the United States government upon delivery by the firm's vendor. The contract further provides that such vested title shall not be affected by incorporation or attachment to nongovernment property nor shall any such government property, ''become a fixture or lose its identity as personality (sic) by reason of its affixation.''

The contract is a contract to improve realty and sales tax applies to sales to the firm notwithstanding the contract language. 4/30/80.

565.0640 **Title—Generator.** A Canadian manufacturer of generators has a contract with the U.S. Bureau of Reclamation for supplying and installing generators, which are used to generate hydro electric power, at a project site in Northern California. If title to the generators passed to the federal government while the generators were still in Canada, sales tax would not apply because the sale occurred in Canada. Use tax would not be applicable because the Canadian manufacturer did not have title in California. 12/30/88.

565.0645 **Title Passage Outside California.** A United States construction contractor purchases construction materials, fixtures, machinery, and equipment outside California for use on a construction contract inside the state. The contract with the United States provides that title to all property purchased by the contractor passes to the United States upon acquisition by the contractor. No tax is due on the property purchased outside California since title passed to United States at the out-of-state location. 12/7/83.

565.0650 **Transformers, Switchgear, and etc.** The installation of transformers, switchgear, conduit, cable, etc. by an independent electrical contractor pursuant to a contract with the federal government constituted improvements to real property. The ex-tax purchase of these items by the contractor was properly subject to use tax because the contractor was the ''consumer'' for sales and use tax purposes. The exemption from sales tax for tangible personal property sold to the U.S. Government is inapplicable in this instance. 9/23/76.

565.0682 **U.S. Government Fuel Waste Disposal Facility.** The scrubbers, blowers, tanks, pipes, pumps, control system, etc., installed in a fuel waste disposal facility built to clean up and remove hazardous waste materials that accumulated at an Air Force base are fixtures, not machinery and equipment. Sales of these items to United States government contractors are taxable. 3/22/91.

565.0688 **U.S. Title Clauses.** Pursuant to section 6007.5 U.S. contractors are consumers of materials and fixtures which they furnish and install in the performance of a contract with the U.S. for improvement of realty located in

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California. Contract provisions purporting to transfer title to property to the U.S. upon acquisition by the contractor are ineffective as to construction materials and fixtures purchased in California. 11/2/93.

(c) ''MACHINERY AND EQUIPMENT''

565.0700 **Auxiliary Generator.** A diesel generator set used to supply power to a computer for a missile-tracking device may qualify as ''machinery and equipment'' if the power generated by it is not used for a housekeeping function such as building lighting provided it otherwise meets the four conditions set forth in the regulation. 12/23/64.

565.0720 **Demountable Noise Suppressor Systems.** Demountable noise suppressor systems readily removable as a unit and intended to be moved from air base to air base as the need arises constitute ''machinery and equipment.'' 7/12/66.

565.0730 **Gas Turbine Generators.** Gas turbine generators, which were designed to provide power for the launch site during a lift-off of rockets at Vandenburg Air Force Base, are skid mounted and bolted to the floor of a specially made building. The units can be readily removed with a crane.

In the case of *C. R. Fedrick* v. *State Board of Equalization* (1988) 204 Cal.App.3d 252, the court concluded that compressors bolted to concrete foundations were fixtures even though they could be easily disassembled and removed. The court also gave consideration to the fact that although they could be moved, they were not actually relocated often.

In this case, the generators were constructed to adapt to the use and purpose of the realty. The generators qualify as fixtures. Accordingly, the U.S. government construction contractor is the consumer of the generators and sales of the units to the contractor are subject to sales tax. 9/18/91.

565.0860 **Portable Equipment.** Dictating and transcribing machines and portable doctor call units which do not become affixed to real property and which are titled in the United States Government may be purchased for resale by a third-tier contractor, by a sub-contractor and by the prime-contractor whose sale to the United States is exempt from tax. 2/11/66.

565.0880 **Retorts.** Retorts used in performing a manufacturing function in the manufacture of magnesium, are ''machinery and equipment.'' 4/30/53.

(d) PROPERTY USED BY CONTRACTOR—''SPECIAL TOOLING'

565.1120 **Transfer of Title from Government to Contractor, Effect of.** Personal property purchased by a nonprofit educational institution for use in a specific scientific research for the United States Government is not taxable because ASPR 13-707 provides that the United States Government acquires title to all property purchased under a cost reimbursement type contract even before such property is used. The government's subsequent transfer of the title of the

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property to the contractor without consideration does not alter the tax-exempt classification of the original sale of the property to the government. 10/14/69.

(e) TITLE-PASSAGE CLAUSES

565.1140 **Aerospace Claim for Refund.** Advice was requested as to whether a taxpayer is entitled to a tax refund under the case of *Aerospace Corp.* v. *St. Bd. of Equalization*. The following two situations were involved.

(1) A manufacturer is a supplier of parts and a subcontractor to a U.S. Government prime contractor. The subcontractor allocates overhead purchases to the prime contractor contract. The subcontractor's contract, (fixed price) does not have the progress payment clause nor FAR reference numbers. However, the prime contractor's contract does contain the progress payments clause.

The fact that the manufacturer allocates all or a portion of overhead purchases to a contract with a government contractor does not, in itself, operate as a title-passage method. Therefore, sales to the manufacturer of overhead items consumed in pursuance of its contract with a government contractor are subject to tax when the requisite title-passage clauses are absent in its contract.

(2) An Aerospace company manufacturers products only for the U.S. Government. All of its contracts are prime government contracts of which some have ''Progress Payment'' title clauses, FAR 52.232-16 and some do not. All of the contracts are managed by the same cost accounting systems and contract costs (including overhead material), are charged to the government monthly.

The Aerospace court's decision pertained only to the second sentence of Regulation 1618 (b) (2). The court left the remaining principles embodied in the regulation intact. Therefore, the manufacturer's purchase of overhead materials are considered to be taxable except for those materials allocated to contracts which have the appropriate ''progress payment'' title clauses. Purchases of overhead allocated to others contracts remain subject to tax. 10/15/91.

565.1141 **Aerospace Contracts.** Contract clause FAR 52.216-7 has an effect on title passage by determining what costs are allowable in cost-reimbursement contracts other than facilities contracts and FAR 52.216-13 has little effect on title passage since it applies to facilities contracts and persons engaged in contracts with the U.S. to improve real property. Neither of these clauses accelerates passage of title to property purchased by the contractors under the Aerospace decision. 12/14/92.

565.1149 **Auto Repairs—U.S. Government Contractors.** A general title provision pursuant to a contract with the United States would not necessarily pass title to parts used to repair vehicles owned or leased by a U.S. Government contractor.

However, if the contract does provide for accelerated passage of title to the parts prior to any use by the contractor, if both parties understand the provision as applying to parts purchased by the company and installed onto vehicles not owned by the United States, the title provision is controlling and the contractor is regarded as having purchased the property for resale. 12/18/92; 1/20/94.

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565.1190 **Canned Software.** Notwithstanding recitals issued by a software publisher concerning end use limitations, canned software may be purchased for resale by a U.S. Government contractor if the contract with the United States contains an accelerated title clause passing title to the United States prior to use. 1/14/92.

(For application of tax to leased software, see Annotation 565.1325)

565.1200 **Cost Reimbursement Contracts.** Sales to contractors of equipment and materials under a ''cost reimbursement'' contract with the U.S. Department of Health, Education & Welfare are exempt sales for resale to the United States provided:

1. There is an appropriate title clause passing title to the property to the government prior to any use by the contractor;

2. The contractor is reimbursed by the United States for his actual costs;

3. Control over the property is placed in government from time title vests in United States; and

4. The property is not used to construct improvements on or to real property. 5/8/67.

565.1230 **Employee's Reimbursable Expenses.** Reimbursable employee expenses purchased by a company through the use of its credit card and properly charged to an overhead account by a U.S. contractor are allowable as sales to the United States pursuant to the *Aerospace* decision. On the other hand, purchases by employees who are reimbursed by the company are not allowable as sales to the United States, even though such costs may be charged to an overhead account. 7/15/92.

565.1260 **Government Demonstration Contract.** A taxpayer is a bioengineering company whose research is funded primarily by grants, co-operative agreements, or contracts with various departments of the United States government. The taxpayer is currently working on a demonstration project with the United States government to produce methane from municipal solid waste and tuna sludge, which methane will be used to produce electricity. The taxpayer will purchase equipment for the project from various vendors and will be reimbursed by the government. The contract with the United States government contain title passage clause which is substantially identical to that provided by FAR 52.245–5(e).

Under the title passage clause, title of items of direct cost passes to the government upon the vendor's delivery of the property to the contractor. Title to ''all other property,'' the cost of which is reimbursable as an item of indirect cost, passes to the government upon issuance of the property for use in performing the contract, commencement of processing of the property for use in contract performance, or reimbursement of the cost by the government, whichever occurs first. The Board has previously determined that, under the Aerospace rule, the clause provides for accelerated passage of title to items of both direct and indirect (i.e., overhead items) cost to the United States prior to use by the contractor.

Therefore, under this title passage clause, the taxpayer may purchase property for use in performance of the contract for resale to the United States, which purchase is excluded from tax under Regulation 1668. The taxpayer should timely issue its vendors resale certificates substantially conforming to Regulation 1668. The following resale to the United States is exempt from tax under section 6381. 12/11/95.

565.1292 **Impact of DCAA Audits of Federal Contractors.** Audits by the Defense Contract Administration and Audit Agency generally have no impact on tax paid to the Board by federal contractors because of disallowed cost.

Under FAR and DOD title clauses, passage of title to the U.S. government is not contingent upon the government reimbursing the contractor for the purchase price of the property. Therefore, the subsequent disallowance of the expense, especially pursuant to a DCAA Audit, cannot be held to cancel the original transference of the title. The DOD FAR Supplement, Subpart 242.70, does not give the DCAA authority to rescind contracts. The only remedy which the DOD FAR Supplement outlines is that of voluntary refunds, either unsolicited or made pursuant to a request by the government. Generally, a voluntary refund is to be used as a set-off against future debt. The regulations do not contemplate the unwinding of property transfers as a matter of course.

In the case of a disallowance where a refund is sought from the contractor, what happens, at most, is a forced re-sale of the property by the government back to the contractor. Such transactions are exempt from tax under section 6402. In case of nondurable overhead items, there is a likelihood they do not exist. There can be no transfer of title to property not in existence. 4/10/91.

565.1300 **Intent to Pass Title.** Title passage clauses, such as ''title . . . shall rest in the government and/or buyers'', that are ambiguous and show no clear intent to pass title prior to use by the seller do not operate to accelerate the passage of title to overhead materials to the United States. Title clauses consistent with the *Aerospace* case generally are contained in FAR 52.232-16(d). This section does not provide for title in ''government and/or buyer'' but rather specifically refers only to ''the government''. 4/21/92.

565.1325 **License of Canned Software.** A U.S. government contractor obtains a license for canned software from a vendor for its own use on a U.S. government contract that contains a title passage clause. The license is for a one year period with an obligation to return the software and any copies at the termination of the one year period. Thus, it is a lease of software rather than a purchase. The contractor will not sublicense the program to the government but rather uses it to evaluate certain criteria.

Under the court case of *United States* v. *SBE,* (9th cir., 1982) 683 F. 2d 316 leases to government contractors are not exempt from tax even though the contractor uses the leased property to perform a contract with the United States and will be reimbursed for the cost of the lease by the United States. The incidence of the tax is on the lessee (the contractor in this case). The lessee's passing of such cost on to the United States does not make the lease one to the

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United States. The charges to the contractor for the software are subject to the use tax which must be collected by the lessor. 6/22/95.

(For application of tax to purchased software, see Annotation 565.1190)

565.1362 **Overhead Materials.** A taxpayer builds, converts, and repairs ships for the U.S. Navy. The taxpayer is not reimbursed by the government for overhead materials as direct items of cost. It has fixed price contracts which contain progress payment clause 252.217–7106 which states, in relevant part:

''(e) All material, equipment, and other property or work in process covered by progress payments made by the government shall upon the making of such progress payments become the sole property of the government, and shall be subject to the provision of Clause 252.217–7105 entitled TITLE hereof.''

Clause 252.217–7105 states, in relevant part:

''Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this agreement shall have vested previously in the government by virtue of the other provisions of this agreement, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the job order, shall vest in the government upon delivery thereof . . . . ''

''[A]ll such contractor-furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, shall become the property of the contractor, except those materials and equipment the cost of which has been reimbursed by the government to the contractor.''

In order for title to the overhead materials to pass to the government prior to use by the contractor, there must be an appropriate title provision between the contractor and the government such as in the *Aerospace* case. The only title provision included in this contract is the progress payment clause. That clause provides that the payment is measured by the labor and materials incorporated in the vessel. In fact, the title clause provides that contractor-provided materials not incorporated in the vessel become the property of the contractor. Overhead materials do not include materials which are incorporated in the vessel. Thus, the government does not acquire title to the overhead materials at all in this contract, let alone prior to the taxpayer's use. Therefore, the taxpayer is liable for the use tax on the cost of the overhead items. 2/15/96.

565.1375 **Overhead Materials—DFARS Title Clause.** DFARS 52.217–7006 title clause in a U.S. Government contract provides that title to any contractor-furnished materials passed to the government as to all property ''to be incorporated in the vessel in the performance of a job order, when that property is delivered to the dock. Overhead materials are not intended to be incorporated in, or placed on, any vessel.'' Therefore, the DFARS clause does not cover overhead materials at all. Also, at the completion of the job, title to ''all contractor-furnished materials and equipment not incorporated in, or placed on any vessel'' shall revert to the contractor unless the government has already reimbursed the contractor for its cost. The ''materials and equipment'' to which the last phrase of DFARS 252.217–7006(b) refers are the ''materials and

equipment to be incorporated in a vessel" title to which passed to the United States upon delivery to the dock and to which it wishes to retain title because it has already paid the taxpayer for the cost thereof.

Thus, DFARS 52.217–7006 clause does not pass title to overhead items because (1) overhead items are not intended to be incorporated into a vessel, and (2) the government does not acquire title indirectly to property not covered by a specific title clause. That the government bears a financial burden of the purchase of the property does not mean that title to it passes to the United States (*United States* v. *New Mexico* (1972) 450 U.S. 720). 12/13/95.

565.1380 **Overhead Materials—United States Supply Contracts.** Taxpayer, a government supply contractor, is one of several subsidiaries of Corporation X with which it shares facilities in California. Corporation X acts as a holding company and provides some services to the taxpayer and its other subsidiaries. The taxpayer's purchasing department buys all overhead materials. Some items purchased are purchased directly by the taxpayer for itself or one of the other entities, but most items purchased on a recurring basis, like pencils, paper, printer supplier, etc., are placed into any one of several overhead accounts that may be shared among the companies occupying the facility. Allocations from these accounts are based on the square footage occupied by all those companies or on a head count. The taxpayer then assigns to its contracts the costs allocated to it.

The United States had audited the taxpayer and concluded that its method of allocating costs to government contracts was permissible under applicable FAR provisions. Accordingly, when the taxpayer uses the method of allocating costs of supply items approved by the United States for its contracts, the taxpayer may purchase such items for resale to the United States provided its contract passes title to such items to the United States prior to any use. 11/30/96.

565.1400 **Passage of Title.** The passage of title to property to the United States is not contingent upon the government reimbursing the contractor for the purchase price of the property.

Typically Department of Defense (DOD) contracts provide with respect to indirect cost items, that title to all overhead material shall pass to and vest in the United States upon the first to happen of the following events:

(1) issuance of the material for use in performing the contract;

(2) commencement of processing the material for use; or

(3) the government reimbursing the contractor for the material.

In many instances, the United States acquires title to the "government-furnished" property prior to reimbursing the contractor for its cost. The Federal Acquisition Regulations (FAR) require that the clauses setting forth the above principles be inserted into the contract. Under the Aerospace decision (*Aerospace Corp*. v. *State Bd. of Equalization* (1990) 218 Cal.App.3d 1300, 1313 [267 Cal.Rptr. 685]), these clauses control the passage of title. 4/10/91.

565.1415 **Passage of Title—Qualified Production Services.** A taxpayer contracted with the United States government to perform certain work which

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constituted ''qualified production services'' under Regulation 1529. Thus, under Regulation 1529, the taxpayer is the consumer of property it purchases to provide such services. At issue is whether or not *Aerospace* overrides the regulation and permits the taxpayer to buy property for resale to the United States government.

Aerospace held that the resolution of this issue is determined by the clauses of the contract. Since the contract at issue does not contain a title clause passing title to overhead items to the United States prior to use, the taxpayer is the consumer of the items that it purchased to perform qualified production services as provided in Regulation 1529. Therefore, it may not purchase such property for resale to United States. 7/29/96.

565.1460 **Property Purchased for Resale.** Any tangible personal property acquired pursuant to a construction contract with the U.S. Government that is not incorporated on or into real property may be purchased for resale to the government. The contract must contain appropriate title clauses passing title to such property to the government prior to use and provide that such property is totally consumed and exclusively utilized in performing the contract. 12/17/84.

565.1520 **Purchase of Meals by Government Contractor.** As a result of the decision in *Aerospace* v. *State Board of Equalization* (1990 218 Cal.App.3d 1300), a government contract may treat indirect costs, such as overhead expenses, properly allocable to its government contracts as purchases for resale to the United States if the government contract involved contains appropriate title passage clauses. A restaurant may sell meals ex-tax to a government contractor if the contractor issues a valid and timely resale certificate which includes a statement that the specific property is being purchased for resale to the Federal government, pursuant to the contract and in the regular course of business. (Note: the sale must be to the contractor and not merely to employees of the contractor who receives expense reimbursement.) 11/15/93.

565.1585 **Resale Certificate—U.S. Government Overhead Items.** In a situation where a U.S. Government contractor is buying an overhead item (such as tax reference books) which it will use in the performance of both government and commercial contracts, and those government contracts contain the appropriate title passage clauses, the *Aerospace* decision permits the contractor to allocate part of the purchase price to its government contract.

Accordingly, the contractor may purchase the item for resale by issuing a resale certificate to the seller. It must then report and pay use taxes on the amount of the sale price allocable to the commercial contract. 2/26/92.

565.1600 **Resale Certificates.** Where a contractor is buying an overhead item which it will use in the performance of both its commercial and governmental contracts and those governmental contracts contain the appropriate title passage clauses, the Aerospace decision permits the contractor to allocate part of the purchase price to its government contracts. The contractor may thus purchase the item ex-tax by issuing a resale certificate to the seller. The contractor must then report and pay use tax on the amount of the sales price allocated to the private and commercial contracts. 2/26/92.

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565.1685 **Software Maintenance Contracts.** Canned software packages can be purchased for resale under the *Aerospace Corp.* v. *SBE* (1990) 218 Cal.App.3d 1300 decision even though there are restrictions against transfer in the licensing package, provided the contract that the contractor has with the United States has the appropriate set of title clauses.

When the general principles embodied in the FAR title clauses conflict with specific principles provided in an agency-peculiar procurement supplements to FAR, the agency supplements control. For example, some supplements have provided that, if the software displays a legend, it is subject to the restrictions with respect to passage of title. In these cases, title to the software stays with the contractor (e.g., DFAR 252.227–7013). Thus, in these cases, reference needs to be made to the supplements as well as the FAR clauses in determining whether an appropriate title clause is in effect. 6/13/94; 1/30/96.

565.1700 **Special Tooling.** A taxpayer entered into a contract with the Navy to develop and deliver two prototype aircraft. As part of the contract, the taxpayer would acquire or manufacture certain items of special tooling (ST) and special test equipment (STE). The ST/STE are so highly specialized that their use is restricted to testing the particular aircraft being developed and related supplies and parts.

Contract Clause H, ''Contractor Investment in Special Tooling and Special Tooling Equipment,'' provides in part that the contractor will acquire, own, and retain title to all new production special tooling and special tooling equipment. This clause also states that in the event the contractor elects to dispose of the ST/STE, the government will have the right of first refusal to acquire ST/STE at a mutually agreed price.

The contract also contains FAR contract clauses in the agreement. Clauses 52.245–17, Special Tooling (Apr 1984) and 52.245–18, Special Tooling Equipment (Apr 1984), were checked off as being included in the contract. The designation for each clause also had under it, in handwriting, the following phrase: ''Also see section H, Special Contract Requirements entitled 'Contractor Investment in Special Tooling and Special Test Equipment'.''

Under these facts, the taxpayer purchased ST/STE, or the materials to make them, as a consumer, and did not transfer title to the Navy prior to using the property. The fact that the Navy reimbursed the taxpayer for its costs of manufacturing or acquiring the ST/STE and that its acquisition provided a benefit to the Navy does not in itself create a sale to the Navy. (*United States* v. *New Mexico* (1982) 455 U.S. 720, 735). A contract must contain clauses specifically providing for the transfer of title to the property in question to the government prior to any use by the contractor to be regarded as purchasing the property for resale (no tax). (*Lockheed Aircraft Corp.* v. *S.B.E.* (1978) 81 Cal.App.3d 257; 265–266).

No such clauses exist in this contract. Actually, Clause H specifically provides that the taxpayer retains title to ST/STE. The provisions of FAR 52.245–17 and 52.245–18 do not mandate a different result since these clauses were modified in

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handwriting to incorporate the provisions of Clause H. Even if these two FAR clauses provided for some sort of title transfer, those terms were modified by the terms of Clause H.

Thus, the taxpayer retains full title to the ST/STE with the government getting a right of first refusal in the event the taxpayer decides to dispose of the property. There was no sale to the Navy. Therefore, the taxpayer owes tax measured by the cost of the ST/STE. 8/28/95.

565.1800 **Title Clauses.** One must look to the clause included in the contracts, whether fully set forth or incorporated by reference, to determine if tangible personal property purchased by a government contractor for use in performing his contract(s) passed to the United States prior to use by the contractor. Lacking such clauses, there is no accelerated title passage. Inferences cannot be made that such a clause is a required part of the contract. 5/20/93.

565.1804 **Title Passage at Out-of-State Point.** An out-of-state construction contractor enters into a contract with the United States to improve realty in California. The contract provides for passage of title to all property when payment is received. The contractor purchases property outside California and fabricates the property outside California. The property is not installed in California until after payment is received. Since title passed on payment, and payment occurred before the property was brought into California, no tax is due. The property belonged to the United States when it entered the state. 2/24/95.

565.1805 **Title Passage Clauses.** There can be no sales to the United States Government if the appropriate title passage clauses are not contained in the contracts, even though the government acquisition regulations require that such clauses be included with respect to certain kinds of contracts. 7/15/92.

565.1925 **Title Passage Prior to Use.** A review of Federal Acquisition Regulations (FAR) leads to the following conclusions regulating the passage of title of property to the United States under a contract with U.S. Government contractors:

(A) Government Property in General

For title to overhead materials or direct cost items to pass to the government prior to use by the contractor, the contract must provide for passage of title upon allocation of the property to the contract. This applies regardless of whether the contract is fixed price or cost reimbursable.

(B) Special Tooling and Special Test Equipment

Title to special tooling and special test equipment does not pass immediately to the U.S. The U.S. must take affirmative action in order to obtain title.

(C) Research and Development Contracts with Nonprofit Educational or Research Institution

On fixed price contracts, title to supplies passes to the U.S. upon formal acceptance unless the contract provides for earlier passage of title. On cost reimbursement contracts title to equipment having an acquisition cost of less than $1,000 vests in the contractor. Title to equipment having an acquisition cost of

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over $1,000 passes as set forth in the contract. Title to direct cost property passes to the U.S. upon allocation to the contract. Title to special test equipment remains with the contractor. Title to special tooling and special test equipment remains with the contractor until the U.S. takes affirmative action to obtain title. 3/13/92.

565.2500 **United States Contractors.** A U.S. contract did not contain a progress payment title clause passing title to the property in question prior to use. The contract did have a provision passing title to all materials and equipment acquired for the vessel. Direct consumable supplies do not fit this category as they may be for use on the vessel, but are clearly not for the vessel. The sale of such direct consumable supplies to the contractor was, thus, not a sale for resale but, instead, was a taxable retail sale. 2/13/86.

570.0000 USE OF PROPERTY IN STATE AND USE TAX GENERALLY

Payment and collection of use tax, see also "Engaged in Business"; Collection of Use Tax by Retailers; Payment of Tax by Purchasers; Receipts for Tax Paid to Retailers; Information Returns. See also Construction Contractors; Containers and Labels; Demonstration, Display and Use of Property Held for Resale; Gifts, Marketing Aids, Premiums and Prizes; Interstate and Foreign Commerce; Motion Pictures; Occasional Sales—Sale of a Business—Business Reorganization; Packers, Loaders, and Shippers; Property Used in Manufacturing; Resale Certificates; Sale; "Tax-Paid Purchases Resold"; and Vehicles.

(a) IN GENERAL

570.0022 **Billing Insert Purchased Out of State.** A printer in Oregon prints billing inserts for a telephone company in California. The inserts are sent to a billing service in California who acts as a billing vendor for the telephone company. The inserts are placed into customers' invoices which are subsequently mailed into Oregon and Washington.

Since the billing inserts are being consumed or used by the telephone company in California, the purchase of the inserts is subject to tax. 1/30/92.

570.0035 **Catalogues Distributed Door to Door.** A taxpayer operates a chain of stores in California and also maintains its business office in California. Catalogues for its stores are printed by an out-of-state printer and the catalogues are distributed door to door to California donee-recipients by independent delivery companies hired by taxpayer. The taxpayer allows the delivery companies to arrange with the printer for deliveries via contract or common carriers to warehouses, designated by the delivery companies, from which door to door deliveries are made. The catalogues owned by the taxpayer are shipped bulk and are not pre-addressed to the California donee-recipients. The independent delivery companies are agents of taxpayer. Title to these catalogues is still vested in taxpayer while they are located at the various California warehouses.

USE OF PROPERTY, ETC. (Contd.)

Section 6009 provides that ''use'' includes the exercise of any right or power over tangible personal property incident to ownership of the property. Thus, the transfer of title to the catalogues in California by taxpayer to the donee-recipients constitute such a ''use.''

In addition, the imposition of the tax upon this use of the catalogues after it has been brought into the state does not violate the Commerce Clause of the United States Constitution. Title to the catalogues was vested in taxpayer while they were located at the warehouses, at which point the interstate commerce portion of the transactions ended. Following the interstate shipment the taxpayer, through its agents, then performs the local intrastate act of transferring title to the donees. 9/10/85.

(Note subsequent statutory change re printed sales message)

570.0037 **Charitable Donations.** Company A, a wholly owned subsidiary of out-of-state company B, operates a warehouse in California that is the center for the receipt of goods purchased from out-of-state companies. Company A mails numerous charitable donations to tax exempt organizations throughout the United States. Company A estimates 80% of the donations are made to entities located outside California. All donated goods, prior to shipment, either have been stored at the California facility or have been shipped to the California facility from the Seattle, Los Angeles, or Denver sub distribution centers of Company B for reshipment to the charitable recipients. The donees generally contact a common carrier and refer it to Company A to arrange for shipment. In other instances, the donees pick up the goods at Company A's California facility or Company A's employees will deliver the goods from the California facility to the donee. Some of the goods are shipped to Indian tribes both inside and outside California.

Company A delivers its gifts to the donees and/or their agents (the common carriers) within this state. At the time the property is transported, Company A no longer has any right, title, or interest in the property. Company A often ships out-of-state inventory into California, not for purposes of resale, but specifically to facilitate making its donation from one place in one load. The storage of the merchandise for donation is storage for a purpose other than ''subsequently transporting it outside the state for use thereafter solely outside the state'' by the purchasers. Instead, it is a taxable use inside this state by company A. The donations are complete at the time the items are loaded onto the common carriers and/or personal conveyances of the donee. Since there is a transfer of title and actual delivery in this state, the local act or taxable event occurs at the point of delivery to the donee or its agent.

The fact that some of the merchandise is shipped to Indian tribes does not affect the application of the use tax. Company A's reliance on Regulation 1616 is misplaced since the transactions under consideration involve gifts to Indians not sales to Indians or a use of property sold to Indians. 4/23/92.

570.0038 **Church Directories.** Company A is engaged in the sales of portraits, slides, prints, and directories. It sells primarily to members of various religious organizations.

USE OF PROPERTY, ETC. (Contd.)

Company A agrees to take portrait photos of members of the organization who are willing to sit for a photo session. It produces a directory of the organization which contains the members' photos together with their names, addresses, telephone numbers, and other information. A copy is given, without charge, to each member who sat for a photo. A copy is also given to the organization. Additional copies are sold to members of the organization or others.

The organization contends that it does not owe use tax on the copies given away because (1) the directories given away are premiums under Regulation 1671, or (2) the directories are exempt ''works of art'' under section 6365, or (3) the directories are not subject to tax because the cost is built into the marked up price of the directories which are sold.

The contention that the directories given away are premiums under Regulation 1671 is without merit. Regulation 1671 covers trading stamps and related promotional plans which are characterized by the use of indicia furnished based on the amount of purchases. Here, there is no such plan.

The directory is not a ''work of art'' as contemplated in section 6365.

As a matter of practical economics, all promotional and overhead costs are included in the selling price of goods sold. The fact that tax is paid on the sales price of goods sold does not negate the application of use tax on goods purchased to promote sales. 7/21/83.

570.0070 **Credit Card Issuers Retain Title of Their Credit Cards.** Most credit card issuers retain title to the cards by a specific statement on the back, thereby incurring use tax liability on those cards purchased outside California and issued to recipients in California (see annotation 570.0080). Some credit cards do not contain such a specific statement. The statement on the card may give the issuer the right to withdraw credit privileges and demand the return of the card; or may require the customer to agree to surrender the card on demand; or may give the issuer the right to demand the surrender of the card. In each case, the wording gives the issuer sufficient control over the cards to be considered the consumer of those sent to California recipients. The tax consequences are the same as expressed in annotation 570.0080. 9/13/72.

570.0080 **Credit Cards.** An out-of-state credit card company which mails credit cards to California members and retains title thereto is the consumer of the cards and subject to use tax measured by its cost of the cards. 2/13/68.

570.0100 **"Deadheaded" to California—Effect.** When a truck is purchased in Oregon by a common carrier in California, is consigned and delivered to a point outside this state, is deadheaded to California for the first payload, the use tax applies. Since the truck was brought to California to pick up its first payload, there is a taxable use in California in the absence of any explanation for the out-of-state delivery other than a device to escape tax without sufficient business purpose to justify it as a legitimate means of tax avoidance. 1/24/58.

USE OF PROPERTY, ETC. (Contd.)

570.0110 **Display Racks—Section 6009.1.** A firm, which manufactures and sells plywood, provides its customers with display racks without charge. There are no minimum purchase requirements in order for the customer to receive the racks. The racks are purchased outside the state and shipped to the firm's California location. The racks are then shipped to out-of-state customers. The firm has made a taxable use of the racks in California. It relinquishes control over the property in California by making delivery of the racks to the carrier here and thereby makes a gift in California. 1/28/74.

570.0113 **Display Shelving and Signage Purchased by Retailers.** A company offers a co-operative advertising plan that provides advertising support for retail advertising of its products. The plan is offered on a proportionately equal basis to its retailer customers in the United States. Retailer co-op funds are accrued by the company, on behalf of the retailers, into a single trust fund from purchases made by retailers. Qualifying media advertising, visual-merchandising shelving, signage and other items are reimbursed from the collective fund at up to 50% of the cost price. Purchase of merchandising shelving and signage can occur by three methods:

(1) A retailer can arrange for the purchase and shipment of promotional shelving and signage to its own stores located in California. The shelving and signage manufacturer's invoice will note the retailer as the 'sold to' and 'ship to' entity. When the retailer receives the invoice from the manufacturer, the retailer remits the invoice to the company for reimbursement of 50% of the cost price.

Under this scenario, the company has no obligation to collect, report or pay tax to this Agency with respect to the sale of the shelving and signage from the third party vendor to the company's customer. The vendor must report and pay tax measured by its gross receipts where its sale to the company's customer is subject to sales tax. The vendor must alternatively collect use tax from the company's customer where the sale is subject to use tax and the vendor is a retailer engaged in business in this state pursuant to section 6203 of the California Revenue and Taxation Code. If the purchaser does not pay use tax to a retailer engaged in business in this state, the purchaser is obligated to self-report use tax measured by the purchase price of the shelving and signage. The taxable gross receipts or sales price from this transaction include all amounts received with respect to the sale of the shelving and signage. The amount of co-op funds paid by the company to its customer as reimbursement may not be excluded from the measure of the gross receipts or sales price.

(2) The company arranges for the purchase and shipment of promotional shelving and signage on behalf of its customer. The customer is shown on the invoice as the 'sold to' and, in some cases, the 'ship to' entity. The company does not obtain possession of the shelving and signage; they are drop shipped directly to its customer's stores. The company will pay the invoice it receives from the shelving and signage manufacturer with funds from the retailer co-op trust fund and will bill its customer for 50% of the cost.

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In this situation, the company directly contracts with the vendor for the purchase of shelving and signage. This is a sale of tangible personal property to the company. If the company is a retailer engaged in business in this state pursuant to section 6203, it may purchase the shelving and signage for resale. The company's subsequent sale of these items to its customer is subject to tax. The amount of co-op funds utilized by the company toward the purchase of the shelving and signage that were earned by its customer may not be excluded from the measure of taxable gross receipts or sales price.

(3) This scenario contemplates the same facts as number two except the company does obtain temporary possession of the shelving and signage; however, they are subsequently transported to the retailer store locations.

The application of tax to this situation is the same as in number two. 09/18/00. (2001–3).

570.0116 **Exemption From Use Tax—Section 6401.** Gross receipts are required to be included in the measure of sales tax unless the gross receipts are exempt under the Sales and Use Tax Law. If a seller is properly liable for sales tax, the purchaser is exempt from use tax. The failure of the seller to pay the tax to the State does not invalidate the use tax exemption under this section nor does it result in the purchaser being responsible for use tax.

The presumption of taxability under section 6091 is not applicable to a purchaser asserting an exemption pursuant to section 6401 that the sale was subject to sales tax. 12/2/91.

570.0120 **Exhibition.** Use tax liability does not accrue on locomotives used solely for exhibition purposes in the state when, following the exhibition of the locomotives, they are placed in service entirely outside this state. 5/17/57.

570.0140 **Experimental Use of Raw Materials.** Mere specification testing of raw materials purchased out of state, prior to its incorporation into a manufactured product for resale, does not amount to a taxable use. However, where such material is utilized in research efforts testing the quality of other products of an experimental nature, a taxable use results. 6/1/55.

570.0150 **Fine Art.** An individual purchased many pieces of fine art from out-of-state sellers without paying sales tax reimbursement or use tax. The paintings were either placed on the walls of the individual's home or in a vault there. This home is and has been a California historical monument. Based on the following, it was concluded that this individual's purchases of fine art was for the purpose of investment and not for resale and the paintings are therefore subject to use tax.

The following factors tend to show that he was not an art dealer. (1) He did not obtain a seller's permit which was required to be held by each person engaged in or conducting business as a seller in California. (2) He also did not file sales tax returns listing his gross receipts which he would have been required to do as a seller. (3) He apparently did not obtain a local business license. (4) He also appears to have not notified the IRS about the details of his art activities. He

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represented to the IRS that the paintings were not inventory of a business because he declared the paintings to be capital assets for which depreciation deductions and capital gain treatment benefits were taken.

There was no desire to immediately resell any paintings because he would have incurred either a loss by a sale at or below cost, or a small profit which did not please the investment goals of a person with his stature. He needed to hold each painting "off the market" rather than as inventory in order to treat it as a depreciable asset and to allow an increase in value prior to eventual sale. The primary purpose for the initial storage or wall hanging of each painting at his home was to retain the paintings as an asset for the necessary holding period in order to allow the appreciation in value. That use was not a demonstration or display for purposes of attempting to make an immediate resale. Once a painting was held long enough to appreciate in value sufficient to satisfy this individual, then an attempt was made to sell it for a long term capital gain. 9/19/94.

570.0160 **Foreign Purchases.** Use tax applies to the storage or use of mobile ramps purchased in Florida by a foreign air carrier and a tugmaster purchased in England, which were brought to California and stored or used in California prior to their being placed in use in foreign commerce by such carrier. 12/21/62.

570.0167 **Horse-Birth of More Than One Foal As An Incident Of Use.** A holder of a seller's permit (issued for the purpose of engaging in the sale of horses) purchased, in March 1981, a horse under a resale certificate. For the period from March 1981 through March 1983, when the permit was closed out, the purchaser made no sales and reported as such on the sales and use tax returns which he filed. Evidence provided by the purchaser substantiated that the subject horse was held for resale in the regular course of business until April 1985, the approximate date the second foal was born.

Evidence provided is as follows:

(1) The horse was consistently advertised for sale.

(2) The purchaser maintained a separate bank account for his business with a "d.b.a." name.

(3) The horse was shown at a number of horse shows for the purpose of finding a purchaser.

(4) The purchaser entered into an agreement with a third party for the purpose of, among other things, marketing the horse for sale.

In this situation, the fact that the horse was depreciated for income tax purposes for several years is inconsistent with the holding of the animal for sale in the regular course of business. If the depreciation had been in error, the taxpayer would generally be required to have filed amended returns undoing the depreciation. However, a review of the income tax returns for the years the horse was depreciated disclosed that the purchaser of the horse derived no tax advantage from the depreciation claimed since claimed deductions from other sources were more than sufficient to shelter the purchaser's entire income. There was, thus, no need to file amended returns to undo the tax benefit from the depreciation. The fact that the horse was depreciated, therefore, did not dictate

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the finding that the horse was not held for sale in the regular course of business. Instead, we look to the other applicable facts.

The birth of one foal generally increases the sales price of a horse because it shows that the animal is capable of production. Generally, the birth of more than one foal is an indication that the horse is being held for breeding rather than resale.

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Under the above circumstances, the horse was purchased for resale and was held for sale in the regular course of business until April 1985, the approximate date the second foal was born. Use tax is due on the purchase price as of that date. The fact that the horse was held for breeding is supported by the fact that the horse is now awaiting the birth of yet another foal in 1986. 8/27/85.

570.0170 **Horses.** Breeding a mare and selling the foal can be consistent with holding the mare for resale because it proves to potential buyers that the mare is healthy and capable of reproduction. However, the taking of depreciation deductions on the mare for income tax purposes is inconsistent with holding it for sale in the regular course of business. If the mare was purchased outside the state and was purchased for breeding purposes in California, the purchaser is liable for use tax.

If the purchaser can show that the mare was not purchased for use in California, tax does not apply. See Sales and Use Tax Regulation 1620(b)(3). The breeding of the mare or the giving birth to a foal by the mare outside this state is a ''functional use'' of the mare outside the state within the meaning of the Regulation. 5/11/87.

570.0174 **Integration of New Computer System With Old.** A taxpayer purchases a computer and network software from a manufacturer located outside California. The items purchased are shipped from the manufacturer's out-of-state location with title passing to the taxpayer at the point of shipment. The computer and software are shipped to the taxpayer's facility in California on a temporary basis for a period of two to five months in order to permit the taxpayer's programmers to fully integrate the new computer with the one that is in place in California. After testing and integrating the new and old systems, the taxpayer will use the new system to run programs and perform tasks useful to the taxpayer in its business, even if the programs or tasks are duplicated in some other fashion by the taxpayer's existing systems. Integrating the systems rather than testing the new system simply to see if it can communicate with the existing system and to see if it meets the taxpayer's specifications consumes the majority of the taxpayer's time and effort during the two to five month period that the property remains in California.

The above purchase of the computer and software is subject to use tax because the first functional use of the property is in California. The taxable activity to which use tax applies is the taxpayer's integration of the computer system, including the hardware and software, into its existing computer system for compatibility with the existing system. The taxpayer is making a use in California of the property for a purpose for which the system is designed, namely to run programs and perform tasks related to the taxpayer's business needs. Because the first functional use of the property is in California and not out of state, it does not matter whether or not the property is principally used outside of California more than one-half of the time within the first six months after the property enters California. That is, the taxpayer owes use tax on the property regardless of whether the period of testing and integration in California lasts as little as two months or as long as five months.

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Integrating the new system with the existing system is not a storage or use of the kind excluded from use tax by section 6009.1. The taxpayer's use of the new system to modify existing programs, write new programs, modify the new software, or in other ways develop processes and procedures to ensure that the two systems function as a unit in the taxpayer's business operations, is not of a kind excluded from use tax under section 6009.1. The integration of the system is an end in itself which is necessary for the taxpayer's business purposes, regardless of the property's ultimate permanent location. 9/30/83.

570.0175 **Interstate Use of Vehicle.** A vehicle is not subject to California use tax when it is purchased outside of California, is first functionally used outside of California in interstate commerce, enters California in course of such use, and is thereafter continuously used in interstate commerce both within and without California. When such vehicle operates between points within this state, the character of the cargo determines whether the vehicle carrying it during a six month test period is regarded as used in interstate commerce. For example, if every load includes an interstate portion of its cargo, the vehicle qualifies as being used in interstate commerce, provided the vehicle is not used exclusively in California (i.e., it must be used within and without this state). However, if there is a wholly intrastate event or haul during the six month test period, use of the vehicle other than interstate use has occurred. If so, the vehicle has not been used continuously in interstate commerce. Thus, the use tax exemption for use in interstate commerce would not apply. 8/2/95. (Am. 2000–1).

570.0176 **Invoices Used by Retailer.** A wholesale grocery company purchases certain invoices to list the products it sells to its customers but also supplies the customers a copy upon the delivery of the property. The company believes that since it must supply the invoices to its customers, it is selling rather than consuming the invoices.

In this case, the company is using the invoices as part of its accounting system and primarily for a check on the flow of goods. Accordingly, the invoices are purchased for some purpose other than resale in the regular course of business and may not be purchased for resale. 11/22/71.

570.0180 **Loan of Property to Private Schools.** Since private schools are not school districts, property loaned to them is not exempt from use tax under Section 6404. 3/8/68.

570.0200 **Loans to Out-of-State Customers.** A manufacturer of gas lasers loans them from stock and delivers them outside this state to out-of-state buyers who have contracted to buy other lasers which are not ready for delivery. When the manufacturer sends the laser that the customer ordered, the loaned laser is in all cases returned to the California manufacturer, who then checks, calibrates, and returns it to stock to be sold as new equipment. Sometimes the returned laser will be loaned again under like circumstances. The manufacturer will not be considered to be making a taxable use of the loaned laser by virtue of the use of the out-of-state customer. 2/2/65.

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570.0220 **Oil Self-Consumed By Petroleum Product Refiners.** Oil refiners acquire oil from various sources, i.e., purchased from the United States, extracted from the earth, purchased under resale certificates, and purchased from out-of-state vendors without issuing a resale certificate. Fuel oil self-consumed is exempt to the extent there is sufficient fuel oil on hand at the time of consumption from sources which would not involve tax. That is, self-consumed fuel oil is presumed to come first from available exempt sources (U.S. government, extracted from the earth) and then, thereafter, from taxable sources (out-of-state purchases, purchases for resale). 8/26/82; 5/20/96.

570.0225 **Out-of-State Use.** A person may not issue a resale certificate to purchase property in this state for the purpose of transporting the property outside the state and claiming the exclusion from ''use'' provided by section 6009.1. The exclusion contained in section 6009.1 applies only to transactions governed by the use tax. Purchases of items in California known at the time of purchase to be for use albeit out of state, under an improperly given resale certificate, are not covered by the exclusion. The exclusion does apply if at the time of purchase it is not known whether the property will be used or sold. 6/9/60.

570.0230 **Person—Joint Operating Agreements.** Operating agreements for the operation of an oil well involving several participants may result in the creation of a ''person'' under the Sales and Use Tax Law (i.e., any group or combination acting as a unit). However, it may not have any tax liability if it is not the ''person'' which is buying or selling tangible personal property. The ''person'' who exercises the right of power over the tangible personal property ''incident to the ownership of the property'' is the one responsible for any tax liability. If the facts demonstrate that ownership of the property rests in one or more of the participants, these ''person(s)'' bear the responsibility for any sales or use tax liability. Unless the unit was buying or selling property in its own name, it would not incur any tax liability despite the fact that it is a ''person'' for sales and use tax purposes. 1/17/91.

570.0240 **Pipeline Transportation, Property Used in.**

(a) Tax applies to the sales price of any tangible personal property used by a person who transports petroleum products by pipeline primarily for purposes of:

(1) Flushing or cleaning the pipeline,

(2) Removing additives or moisture, or

(3) Serving as a minimum buffer between other products transported through the pipeline.

(b) Where, and to the extent that, a person who transports petroleum products by pipeline uses crude oil of his own production, or a product he has derived from such crude oil, for the purposes stated in (1), (2), and (3), above, no tax liability is incurred by reason of such use.

(c) A minimum buffer is that quantity of a product which is required to prevent two other products, one immediately preceding and one immediately

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following the buffer product, from commingling with one another while being transported by pipeline from one place to another.

Whenever a product is introduced into a pipeline in larger quantities than required for buffering purposes, it will be presumed that the introduction was for the purpose of transportation. No portion of the product will be considered to function as a ''minimum buffer.'' Tax will not apply to the sales price of the product. 8/31/70.

570.0280 **Principal Use, Place of.** In fixing the place of ''principal use'' of an aircraft used in multistate operations for purpose of determining if it is subject to California use tax, it is proper to count storage of the aircraft. 12/7/64.

570.0300 **Principal Use, Place of.** Use tax is applicable with respect to tankers sold and leased back when the vessels received their principal use in this state after the sale. Principal use in this state includes all use within the boundaries of the state whether used in interstate or intrastate commerce, and whether used in transporting property for hire or in transporting the user's own property. Likewise included is any use on the high seas during a journey from one point in California to another point in California. 1/18/55.

570.0308 **Purchase for Use in California.** An aircraft is purchased outside California. The first flight is made from the out-of-state purchase location to California for the purpose of picking up a specific passenger or specific passengers for transport within or outside of California. This flight is a ''first use'' of the aircraft outside the state. Accordingly, the use of the aircraft will not be subject to tax if the aircraft is used or stored outside California for one-half or more of the time during the six-month period immediately following its entry into California. 11/12/93.

570.0320 **Receipt Paper.** The sale of receipt paper for use in a cash register is purchased for use in a business rather than for resale and is subject to tax. 4/21/54.

570.0328 **Rejected Property Not Returned to Resale Inventory Used in Testing.** A manufacturer of integrated circuits purchases silicon wafers under resale certificates. These wafers are etched with micro-circuitry to produce integrated circuits for sale. Each batch of wafers is tested to assure proper manufacturing by withdrawing a sample wafer and testing it. Some percentage of wafers fail to meet quality control standards and are rejected. Most rejected wafers are scrapped. Some are back-lapped by the integrated circuit manufacturer. Back-lapping consists of cleaning and coating. Back-lapped wafers do not meet the manufacturer's quality standards for manufacturing integrated circuits for resale. The manufacturer uses the back-lapped wafers to test various manufacturing processes. These test wafers are processed through the individual manufacturing processes separately from production wafers as a verification that the process is operating properly. If the process is operating properly, new production wafers are fed through the process as part of the normal manufacturing operation.

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If property was purchased for resale and is withdrawn from the resale inventory for research and development use, tax will apply to the cost of the property at the time it is withdrawn from resale inventory. In the above situation, the conditions are different in that the back-lapped wafers are not returned to the manufacturer's resale inventory. The quality level of those wafers is not acceptable for use in the manufactured products which are resold. Further, the back-lapped wafers are not used in research and development. In this situation, the rejected wafers are treated as scrap and should be regarded as having been purchased for resale and tax does not apply to its sales price to the integrated circuit manufacturer. 12/20/88. (Am. 2000–1).

570.0335 **Research and Development Credit on Federal Income Tax Return.** A taxpayer's taking of a research and development credit on a federal income tax return will not, by itself, constitute a ''use'' under section 6009. A research and development credit is unlike a depreciation deduction or investment tax credit involving tangible personal property which does require a ''use'' of tangible personal property in order for the taxpayer to take the income tax deduction or investment credit. 10/6/97. (M99–1).

570.0340 **Sales Tax Applicable.** Section 6401 prevents the use tax from applying to the use of property purchased from a retailer whose gross receipts are subject to the sales tax. It does not exempt from the use tax the use in this state of property which is eventually sold at retail by the user. 5/7/57.

570.0350 **Sales Tax vs. Use Tax.** Property sold by an out-of-state vendor, but delivered from its California warehouse is subject to sales tax not use tax.

Property sold by an out-of-state vendor, shipped from an out-of-state warehouse and delivered to one of its independent dealers in California, for installation, is subject to use tax not sales tax. There is no evidence of any in state participation by an office or other place of business of the vendor and pursuant to the contract of sale title passed under the contract at the out-of-state point of shipment.

Property shipped by an out-of-state vendor and delivered by its own trucks from an out-of-state point to California is subject to use tax. Again, there is no indication of in state participation by an office or other place of business of the vendor. 12/6/90.

570.0372 **Specific Payload.** For purposes of determining whether the first functional use was out of state, if a new truck is dispatched from out of state to pick up a specific payload in California, the first use of that truck occurs outside the state. It is not necessary that the ''specific payload'' be identified by serial numbers or other identification of such specificity. For example, instructions to pick up appliances at the Ontario warehouse at a specific time and date is sufficient for the load to be a specific payload. On the other hand, if it is dispatched to the warehouse to pick up the next available payload, it would not qualify as a ''specific payload,'' but rather is ''any payload'' as discussed in the annotation. 1/5/94. (Am. 2000–1).

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570.0380 **"Standby" Purposes.** An item actually in ''standby'' service such as a fire extinguisher or any equipment held in readiness for use should the need arise is considered used for purposes of sales and use taxes, even though the need never arises and the property is ultimately sold or discarded. In the event it is sold, no deduction of the tax paid purchase price as a ''tax-paid purchase resold'' item is allowable. 11/7/66.

570.0386 **Storage Charges.** An out-of-state retailer contracts for the sale of equipment to a company with a business location in California. The contract provides for storage charges with eventual shipment of the equipment to California. The storage charges were part of the original purchase order. After change orders were received, the storage charges were separately stated. The ultimate disposition of the property stored outside California is uncertain. The property may not leave the state it is stored in.

The total amount of the sales price includes any services that are part of the sale. The storage charges are considered a part of the sales price whether separately stated or not. Therefore, those storage charges related to property sent to California are included in the measure of the use tax. 8/2/95.

570.0400 **Testing.** A piece of equipment was purchased and sent to California and use tax paid thereon. Subsequently, a similar piece of equipment was also shipped to California where both pieces were tested for local fitness. As a result, the piece of equipment first shipped, and upon which use tax was paid, was reshipped out-of-state, and the second piece of equipment was retained in use in California. The use tax is payable on both pieces of equipment as each was placed to a taxable use in the state. 3/9/53.

570.0405 **Testing—Computers.** When computers are taken off the production line and utilized for testing other components, such as plug-in boards and trunk lines, a taxable intervening use takes place. The fact that the company sometimes tests, improves, and refines the computers as a result of their being in the testing area does not alter the fact that a taxable use of the machinery is made prior to its being covered and sold. 9/29/78.

570.0410 **Testing and Training.** Machinery is purchased from a California retailer or an out-of-state vendor, delivered to a California location, and set up alongside a counterpart for:

(1) Testing to insure it performs as required.

(2) Training key employees from the out-of-state facility.

(3) ''Burning-in.''

Upon completion of these functions, the machinery will be shipped to the out-of-state facility.

If the machinery is purchased from California vendors, delivered in this state, and later shipped out-of-state, the transaction is subject to sales tax. If the machinery is purchased outside this state and shipped to a California location, the matter of interest is whether any taxable use occurs in this state.

(1) The testing of machinery, by itself, would not be a taxable use.

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(2) The training of the key employees from an out-of-state facility would be a taxable use.

(3) The installation of machinery in this state used to produce a product which is used in R&D labs or placed in inventory for the ''burn-in'' period would constitute a taxable use of machinery.

Thus, any use of the machinery, other than testing for defects before it is shipped out-of-state is a taxable use of the machinery in this state. 8/23/93.

570.0411 **Testing as Only Use in State.** An out-of-state bank has subsidiaries in California and other states. It institutes a plan to upgrade the computer systems used in the branches of all of its subsidiaries. It purchases the equipment which it will resell to the subsidiaries. It arranges for all of the equipment which it buys for the upgrade plan to be shipped to a service center in California which is owned and operated by another party. The other party unpacks the hardware, loads software and arranges packages as they will be used at specific branches in order to test the system. Once tested, equipment is repackaged by the other party and shipped at the bank's direction to specific branches inside and outside California. The equipment will not be functionally used until it is installed at the individual branches.

Tax will apply to the equipment sold to and used by California branches. Tax does not apply to equipment sold and shipped to and used by out-of-state branches. 2/24/94.

570.0415 **Tractor Pulling Trailer Out of State.** A tractor is sold by a California vendor to an out-of-state purchaser under a purchase order which requires the vendor to deliver the tractor to the purchaser at an out-of-state location. The purchaser requests the vendor to arrange for the delivery carrier, who furnishes only a driver, to tow to the out-of-state location a newly purchased trailer or the purchaser makes the arrangement directly with the carrier. The towing of the trailer by the tractor is not a taxable use of the tractor provided no cargo is carried, and provided that the purchase order for the trailer requires the trailer vendor to deliver the trailer to the purchaser at the same out-of-state location. We will treat the tractor and trailer as a single unit under this set of circumstances regardless of whether the tractor vendor is also the trailer vendor. 8/23/76.

570.0417 **Trade Show Exhibits.** A manufacturer of custom trade show exhibits designs and manufactures the exhibits for use in expositions throughout the United States. The exhibits are made of durable wood consisting of numerous free-standing modules, and are designed and built to be used for five years or longer. These exhibits are sold to known California residents with delivery to an out-of-state location. The exhibit is used outside the state but is returned to California to the manufacturer's premises within 90 days from date of purchase for storage and occasional repair or modification. An exhibit was in storage for more than 50% of the time during the following six months. The manufacturer believes that the keeping of the exhibit in its crated condition is not a taxable use because the exhibit is stored for subsequent transportation and use outside this state.

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The courts have concluded that the section 6009.1 exemption requires exclusive use outside of California and that the functional use of the property is irrelevant. *Atchison, Topeka and Santa Fe Railway Co.* v. *State Board of Equalization (*1956) 139 Cal.App.2d 411. The court also held that when section 6009.1 was enacted, the exemption was not worded to exempt property subsequently used in interstate commerce but only to exempt property ''thereafter used solely outside the state.'' As the property came back into California and was not used solely outside of this state, the requirements of section 6009.1 have not been met. 4/29/91.

570.0420 **Transportation Charge.** Measure of tax is price at point of delivery to purchaser and does not include the transportation charge that would be included if delivery had been made at dealer's place of business in this state. 5/25/50. See generally, Transportation Charges.

570.0425 **Use Tax Payment to DMV—Nearest Dollar.** Although there are no statutory provisions under the Sales and Use Tax Law which allow the rounding off of a purchaser's use tax liability to the nearest dollar, there is such authorization under section 4750.5(d) of the Vehicle Code. Therefore, if DMV follows the above reference statutory provisions concerning rounding off, such a procedure would be legally correct. 6/24/76.

570.0427 **Use Tax—Principal Use Test.** One of the tests used in determining whether property is subject to use tax is whether or not during the first six months following the entry of property into this state it was stored or used here more than one-half of the time. This test is solely to ascertain intent. The tax, if applicable, applies to the taxable moment following entry of the property into this state. This moment, no matter how brief, between the initial journey into this state and the beginning of continuous use in interstate or foreign commerce, is sufficient to sustain the imposition of the use tax. The taxable moment need not involve functional use of the property. It may be ''keeping and retaining,'' ''retention and installation,'' etc. If the property in question is stored in this state and is used to further the intrastate activities as well as the interstate activities of the owner, it cannot be said to have been used exclusively in interstate commerce. 10/9/67.

570.0435 **Withdrawals from Ex-Tax Inventory.** ''Storage or use'' and ''stored or used'' within the meaning of subdivision (a)(2) of Regulation 1668 is storage or use in this state. A person who properly issues a resale certificate when purchasing property and thereafter uses the property solely outside California does not owe California use tax with respect to that out-of-state use. (See Regulation 1661 for the application of tax to out-of-state use of mobile transportation equipment which is purchased under a resale certificate for the limited purpose of leasing.)

Storage or use includes, but is not limited to, the withdrawal of property from resale inventory or other ex-tax inventory (such as property purchased from outside California without the payment of California use tax) for functional use in this state by the purchaser and for the transfer of title in this state to other

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persons in transactions that do not constitute sales (e.g., making gifts, loans, donations, and transferring marketing aids for less than 50 percent of the purchase price). For example:

(1) A person purchases 1000 watches under a resale certificate. The purchaser withdraws 100 watches from the California resale inventory and ships them to the purchaser's Nevada store. The Nevada store places 90 watches in resale inventory and makes a gift of 10 watches to its employees and customers. Under these facts, the purchaser continues to hold the 90 watches in resale inventory, and California use tax does not apply. The purchaser makes a use of the other 10 watches, but that use is in Nevada and is not subject to California use tax.

(2) Same facts as above except the purchaser ships the 10 watches given to its customers and employees from California by common carrier. Under these facts, the purchaser uses the 10 watches given to customers and employees when the purchaser delivers the watches in California to the common carrier for shipment to donees outside California. There is no interstate commerce exemption for such use because it is not a sale in interstate commerce. The use in California is complete at the time of delivery to the common carrier. The purchaser owes California use tax on the purchase price of the 10 watches.

(3) A person purchases 1000 watches under a resale certificate. The purchaser's logo is on the face of 100 of the watches and, at the time of purchase, the purchaser plans to give these 100 watches to its employees and customers for promotional purposes. The purchaser takes delivery of the 1000 watches in California and places them in its California warehouse. The purchaser sends all the watches to its Nevada store and places 900 of them in resale inventory. The Nevada store distributes the 100 watches with the purchaser's logo to customers and employees without charge. The Nevada store also removes 50 other watches from Nevada resale inventory and distributes them to customers without charge.

Since the purchaser knew at the time of purchase that it would use, and not resell, the 100 watches with its logo, it was improper to issue a resale certificate for their purchase. Use tax is due on the purchase price of these 100 watches. The remaining 900 watches were purchased as a fungible, commingled lot, all or most of which the purchaser intended to resell. Since the purchaser did not know at the time of purchase which, if any, of the fungible, commingled lot would be withdrawn for use, the resale certificate was properly issued for their purchase. The subsequent withdrawal by the Nevada store of the 50 watches was a use outside California and no California use tax applies. 5/19/95.

570.0438 **Withdrawals from Ex-Tax Inventory.** When a person properly buys tangible personal property ex-tax for resale and withdraws some of it for use in California, he/she is liable for use tax measured by the cost of the property. However, where the property is consumed out-of-state, tax does not apply. (Revenue and Taxation Code 6009.1).

(Note: A gift of property in this state is a use in this state not withstanding out-of-state shipment. See Annotation's 280.0040 and 280.0640). 2/5/93.

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570.0440 **Withdrawals from Manufacturer's Inventory.** A manufacturer of scientific research machines withdraws machines from inventory and uses them for training, application research, and quality assurance. Machines withdrawn from inventory and used to train employees in servicing, for study to determine new applications, and to test other machines, are subject to tax measured by the cost thereof. 7/21/67.

(b) USE IN STATE, PURCHASED FOR—INTENT OF PURCHASER

570.0480 **Contract to Purchase, Intent at Time of.** If at date of purchase of car (normally date of delivery) purchaser knew that car was to be used in this state, tax applies irrespective of lack of such knowledge when he placed order for car, or when he contracted to purchase car. 4/3/51.

570.0500 **First Functional Use of Property—Effect of.** Property purchased from an out-of-state retailer is subject to the California use tax if the first functional use of the property is made in this state. If the first functional use is madeoutside this state, use tax may nevertheless be applicable if the property is determined to have been purchased for use in this state by means of a "principal use" test. 8/17/77.

570.0505 **First Functional Use.** For purposes of Regulation 1620, "functional use" is defined as "use for the purposes for which the property was designed." This definition distinguishes between property designed for personal use and property designed for commercial use. Vehicles, vessels and aircraft are not necessarily functionally used simply because they are driven or piloted. Thus, for example, while automobiles (including vans designed for families) are designed for personal use and are first functionally used when initially driven on a public street, "big rig" trucks, buses, commercial vans, limousines and hearses are first functionally used when they carry cargo or passengers, or when driven pursuant to dispatch orders for the same. A similar distinction exists between vessels designed for personal use and vessels, like a sightseeing boat, that are designed for commercial use. Likewise, aircraft designed for personal use (e.g., small prop airplanes that seat six or fewer) can be distinguished from aircraft designed for commercial use (e.g., jet aircraft).

Regardless of size, any vehicle, vessel or aircraft specifically modified or outfitted for commercial use is not designed for personal use. However, where a purchaser establishes that a vehicle, vessel or aircraft ordinarily considered to be designed for commercial use was, in fact, purchased for personal use, such property will be considered first functionally used when first driven or piloted. By establishing that the property was purchased for personal use, the purchaser is necessarily contending that it was not purchased for the primary purpose of business use in interstate or foreign commerce and the provisions for exclusion from use tax based on commercial miles traveled by a vehicle, commercial nautical miles traveled by a vessel and commercial flight time traveled by an aircraft in interstate or foreign commerce as set forth under Regulation 1620, subdivision (b)(4)(B), are not applicable. 5/31/02.

USE OF PROPERTY, ETC. (Contd.)

570.0510 **First Functional Use.** If a lessor of a vessel were to transport the vessel by its own power into California in order to lease it to any lessee he could find, the first functional use would be in California. However, if the vessel were transported by its own power into California in order to fulfill delivery to a specific lessee, the first functional use would be outside California. 4/7/78.

570.0580 **Foreign Country, Purchase for Use in.** A purchaser of an automobile in Europe who brings it into the state is not liable for use tax when at the time of purchase she intended to use the car for sight-seeing purposes in Europe and then sell it prior to returning to California, but on her failure to find a purchaser had shipped it to California where she subsequently sold it. 8/22/60.

570.0620 **Government-Owned Foreign Airline.** A foreign airline company, a public corporation formed and substantially owned by a foreign government, is liable for use tax measured by the purchase price of spare aircraft parts purchased outside California and shipped into California for storage and installation, as needed, where tax treaties between the United States and the foreign government grant no immunities from state use taxes. However, parts later transshipped to points outside for installation are exempt. It is immaterial that such parts, when purchased, were not specifically intended or earmarked for storage and installation in California. 6/8/64; 7/15/64.

570.0640 **Intrastate Use Over I.C.C. Routes.** Vehicles which haul substantially wholly intrastate shipments over routes for which a firm holds Interstate Commerce Commission operating rights are subject to use tax. The character of the cargo determines the classification of the hauling operation rather than the operating rights. The fact that the various vehicles in question originally were licensed only in this state further supports the conclusion that the vehicles were purchased for use in this state. 1/7/64.

USE OF PROPERTY, ETC. (Contd.)

570.0665 **Replacement Automobile.** An individual plans to go to Europe, to stay there at least 3½ months, and to buy an automobile for use while there. The individual plans to bring the automobile back to California with him after using it for more than 90 days in Europe. Shortly after he took possession of the automobile in Europe, it was stolen. The individual's insurer replaced the automobile and he brought the vehicle back to California with him. Because of the theft of the first automobile, the second automobile was used for less than 90 days in Europe.

It was the intent of the individual that the second vehicle be used in California prior to the passage of 90 days. Accordingly, tax applies. 3/23/95.

570.0670 **"Storage" and "Use" Exclusion—Commingled Property.** A purchaser purchases property which is consumed at locations both within and outside California. The seller of the property ships the property from his California warehouse and out-of-state warehouse to the purchaser's California receiving warehouse. Property shipped from the seller's California warehouse and out-of-state warehouses are identical in many instances. The purchaser at the time of purchase does not know at which location the property will be used. All property purchased is commingled.

Since the purchaser is consuming the property purchased and the seller is aware of this, a resale certificate cannot be accepted in good faith. Either the sales or use tax applies to property delivered to the purchaser's California warehouse. The purchaser cannot issue a "use tax exclusion certificate" since all property is commingled and he does not know what specific property will be shipped to an out-of-state location. Also, not all of the property will be removed from the state.

The purchaser may file a claim for refund for use tax not due. To accomplish this, the purchaser should maintain updated inventory records showing what percentage of the property is shipped from the seller's California warehouse and the percentage from out-of-state warehouses. The measure of the refund is calculated by multiplying the percentage of inventory from the out-of-state warehouse to total inventory at the time the property is removed from the state times the total purchase price of property removed from the state. 5/19/93.

570.0690 **Testing.** A purchaser stated that a machine was received in California from outside the state, but was not yet functional. The purchaser had anticipated using it in California for several months before shipping it to Illinois. It is now anticipated that it will be tested in California for about a month before shipping to Illinois.

If the sole use of the property within California is testing prior to its functional use, and the property is subsequently shipped out of state, the exemption requirements of Section 6009.1 are met. However, if the testing is not limited to pre-production test of the machine itself, but includes practice runs for such purposes as "testing" for its suitability for a particular purpose, or an operator's capabilities, the use tax will apply. 4/28/93.

USE OF PROPERTY, ETC. (Contd.)

570.0720 **Transient Use—Place of Ultimate Use.** Kinescopes first used in this state were purchased for use in this state within the meaning of the Sales and Use Tax Law, even though they are subsequently used elsewhere, and perhaps are properly regarded as purchased for use in other states as well as California. 11/10/52.

570.0740 **Transient Use—Place of Ultimate Use.** A motion picture advertising firm in the business of furnishing prints of advertising films concerning local merchants to local theaters is the consumer of such prints. Accordingly, tax is applicable to its fabricated cost of prints produced and purchased outside the state which have not been used substantially prior to being used in this state. 10/11/67.

570.0780 **Transient Use—Place of Ultimate Use.** The use tax would not apply to lumber brought into California which had been grown on the owner's timber farm out-of-state, to be used by such owner in erecting a cabin. Likewise, a trailer used for transporting such lumber to California, if purchased out-of-state prior to any intention to use it in California, would not be subject to use tax. 11/12/53.

570.0800 **Transient Use—Place of Ultimate Use.** Car purchased in Kansas for use there, which owner tried to sell before coming to California, is not subject to use tax when brought to California because owner was unsuccessful in deal to sell in Kansas. 6/8/50.

570.0840 **Transient Use—Place of Ultimate Use.** Where an automobile is purchased through a dealer in Hawaii and delivery taken in Missouri, and subsequently driven to California and placed in storage, the owner proceeding to Hawaii intending to remain there and have the car shipped to him, but in view of subsequent determination that car was not needed there, ordered it sold, the use tax does not apply. 2/4/53.

570.0848 **Use of Property in State—Reporting Period.** The use tax applies to the storage, use or other consumption of tangible personal property purchased from out-of-state vendors for use in California. The tax applies at the time of first use, which occurs when the purchaser first exercises any right of ownership over the property. First use is not limited to the first functional use of the property, and includes the storage of property in this state, while the California location where the equipment will be used is being prepared for the equipment's installation. 12/9/94.

(c) PRESUMPTIONS

570.0860 **Construction of Statute—Incidence of Involvement.** Section 6247 applies with respect to property delivered outside this state to a purchaser known by the retailer to be a resident of this state, whether delivery is made from a point in or outside the state, if there are sufficient incidences of involvement by this state with the transaction, e.g., if the property is located here at the time the contract for sale is entered into, if the contract is negotiated here, or if the order originates here. However, if there are circumstances known to the Board which make it appear that the property was used outside the state, as where it is shipped

USE OF PROPERTY, ETC. (Contd.)

from California to a contractor for use in fulfilling a contract outside the state, the presumption specified in the section may be considered controverted. 8/25/77.

570.0880 **Construction of Statute.** Section 6247 applies solely to the use tax and relates to presumption of use tax liability when shipments are made out-of-state to a known resident of California.

The second paragraph of such section does not, however, operate to release from tax, sales made and delivered to California purchasers in this state, even though subsequent out-of-state use of property was contemplated. 12/23/53.

570.0920 **Intent to Use in State.** A vehicle purchased in California for use overseas and sold upon return to California within 90 days of original purchase is presumed to have been acquired for storage, use or other consumption in this state and therefore is subject to tax. If it can be shown that use in California was not intended within 90 days of purchase, the board will exempt the use from tax. However, changing the registration of the car to that of the wife indicates intent to use the vehicle in California. 10/5/64.

570.0940 **Intent to Use in State.** If at the time of purchase the purchaser actually intends to use the car in this state and does so use it, the tax applies. If, on the other hand, at the same time of purchase the purchaser did not intend to use the car in this state, we will regard the tax as not applicable, even though through a subsequent change of intention the car is used in this state.

There is a presumption in the Sales and Use Tax Law (Section 6246) that tangible personal property shipped or brought to this state by the purchaser was purchased for storage, use, or other consumption in this state. It is, therefore, necessary for a purchaser who claims that he did not purchase the car for use in this state to overcome this presumption by satisfactory evidence such as affidavits, travel orders, or changes of assignment of duties that will reasonably establish that at the time of purchase the purchaser did not intend to use the car in this state. 3/31/50.

570.0980 **Pending Employment Transfer,** where automobile is purchased with knowledge of, purchaser deemed to have bought car for use in this state. 12/19/50.

(d) EXCLUSIONS

570.1038 **Aircraft Parts.** An out-of-state retailer, who is engaged in business in California, sold aircraft parts to an Oregon vendor who requested that they be shipped to California via common carrier for repair. After repair, they were shipped to Oregon via common carrier.

Since the aircraft parts were brought to California for repair and were then sent to the purchaser in Oregon, the repair in California may come within the section 6009.1 storage and use exclusion. If the repaired parts shipped to Oregon do not return to California during the six month test period, they are considered used

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''solely'' outside this state and are not subject to tax pursuant to section 6009.1. If the parts are returned to California within six months, the exclusion does not apply. 6/9/95.

570.1040 **Aircraft Parts and Engines.** With respect to aircraft parts and engines transferred from a maintenance base in California and installed on aircraft outside this state, which aircraft are subsequently used in this state in both interstate and intrastate commerce, the use tax applies if the parts and engines were purchased for use whenever and wherever (including California) such items would be needed and were actually used in California in either interstate or intrastate operations, or both.

If the aircraft on which the parts and engines were installed are not used in California within 6 months from the date the parts and engines were transferred out-of-state, the parts and engines, will be considered as exempt from the use tax under Section 6009.1, provided, however, the aircraft with the parts and engines installed therein are actually substantially used in revenue or company service outside this state within the 6-month period.

The mere holding of the parts and engines for standby or emergency purposes for 6 months or more outside this state does not exempt the initial storage or retention in California from the use tax. 2/3/66.

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570.1100 **Building.** After purchase of a building from the Public Housing Authority, if the taxpayer moved the building out of California for his own use or if he sold it and title passed outside of California, his retention of the property in this state comes within the terms of Section 6009.1 and is not subject to use tax. 7/24/57.

570.1115 **Consumable Supplies for Foreign Air Carrier.** A foreign air carrier has certain disposable trays, bowls, flatware, and the like shipped into California from out of the country and stored in duty free warehouses. The carrier contracts with another company to cater the in-flight meals. The company prepares the food, places it on the carrier's trays with the carrier's cups, bowls, flatware and napkins, and delivers the meal trays to the airplane. The carrier also stores passenger comfort items such as razor blades, eye shades, and slippers in the duty free warehouses. These items are delivered to the flight crew for disposal at their discretion with instructions not to give out the travel kits until after take-off. The carrier believes that the disposable food supplies and travel kits are used outside of California and are exempt from tax.

The only ''use'' of the disposable food supplies was to take the individual items and assemble them with food products to form a meal tray. In interpreting section 6009.1, the courts have stated that there is no taxable use if the property has no function in California other than to move through the state for consumption elsewhere. Accordingly, use tax does not apply to the storage of those items in this state for use outside the state. However, if any of the items used to prepare the meal trays are items which can be reused in California such as stainless silverware, cloth table napkins, glasses, etc., the use to assemble the trays will be subject to tax. Section 6009.1 requires that the property be used solely outside the state.

Although the crew members do not have control over the comfort items and could give them out early to a passenger, it does not appear that they are given to passengers in California; accordingly, they are not subject to use tax pursuant to section 6009.1. If they were given away in California, a gift would have taken place in California, and the carrier would be responsible for the use tax. 5/23/91.

570.1120 **Delivery of Property in State for Out-of-State Use.** An out-of-state company sold and shipped equipment to a customer in San Diego from the out-of-state location. The customer stated the purchase was exempt because the equipment was to be used in Mexico. The company did not receive any type of exemption certificate.

While it is possible that the customer's use of the property may qualify for an exclusion from the use tax, the sale is not exempt merely because the customer states the property will be used in Mexico. For example, the property may be nontaxable under section 6009.1. In order for a use tax exemption or exclusion to apply, the customer must prove the facts required to meet an exemption or exclusion. 10/14/88.

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570.1121 **Delivery of Property in State for Out-of-State Use.** A firm purchases component parts for its manufacturing equipment from a foreign manufacturer's sales office in California. The California sales office accepts the order, arranges for delivery from the foreign plant, and handles processing through customs. Title passes to the purchaser at the sales office in California. Pursuant to the purchaser's instructions, the sales office ships the property to a third party in California to incorporate into other equipment. The third party then ships the equipment to the purchaser's location outside of California for use by the purchaser outside California. Under these facts, where the sale of the property is made through the foreign manufacturer's California sales office and title passes (and thus the sale occurs) in California, the applicable tax, if any, is sales tax. Since the section 6009.1 exclusion applies only to use tax, it does not apply here. The manufacturer owes sales tax on its sales.

If title to the property passes to the firm outside California, the sales tax would not apply; rather any applicable tax would be the use tax. If the storage or use of the parts in California is for the purpose of incorporating them into equipment that will be transported outside this state for use solely outside this state, such storage or use comes within the section 6009.1 exclusion and the purchaser would not owe use tax on such storage or use. 06/19/96.

570.1140 **Material Withdrawn from Inventory for Use Outside California.** An in-state company has agreements with two out-of-state firms for the collection of blood plasma for the company. The original purchase order indicates that the in-state company will supply disposable blood-collecting equipment for $6.00 and $6.60 per set. An amended purchase order provides that the in-state company will furnish the equipment to the firms without charge.

The out-of-state firms are not authorized to use the equipment furnished by the in-state company when collecting plasma which is not being sold to the company. Also, title to the equipment furnished by the in-state company for no charge is retained at all times in the in-state company. Accordingly, the company does not sell such equipment to the out-of-state firms pursuant to a sale in interstate commerce.

Notwithstanding the above, the company's withdrawal of such equipment from resale inventory for its own use outside this state constitutes the exercising of power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter solely outside this state. Such exercise of power over tangible personal property is not a use subject to tax. (Section 6009.1). 1/31/66.

570.1160 **"Outside State" for Purposes of Section 6009.1.** Sections of pipe will be purchased outside the state and welded together in the state. The pipe will then be laid on the ocean floor and used to transport oil from a drilling platform on the outer Continental Shelf to the California shore. That portion of the pipe

USE OF PROPERTY, ETC. (Contd.)

that lies on the outer Continental Shelf will be regarded as used solely outside the state for purposes of Section 6009.1 and no use tax will apply to the purchase price of that portion of the pipe. Similarly, where electric cable is purchased outside the state, splice welded in the state, laid on the ocean floor and used to provide electrical service between the platform and the shore, no use tax will apply to the purchase price of that portion of the cable that lies on the outer Continental Shelf. 6/18/68.

570.1165 **Purchased for Use.** Where property is purchased outside this state for use here, is brought here and later transported for use solely outside the state, and nothing is done with the property while it is here except store it, such property is exempt from use tax under Section 6009.1. 8/24/70.

570.1168 **Purchases For Use Outside California—Section 6009.1.** A company services offshore rigs which are located in federal waters off the coast of California. The company purchases materials and consumables (i.e., items used at the job site) both inside and outside of California. The items purchased are transported to the dock warehouse inside California and remain there until needed at the rig.

When the company purchases the property inside of California, the applicable tax is sales tax owed by the retailer to the state of California. The storage and use exclusion provided in section 6009.1 is an exclusion from use tax, not from sales tax. Therefore, when the sale takes place in California, the storage and use exclusion does not apply. However, when property is purchased outside this state for storage in California, the use tax applies. Therefore, the exclusion provided in section 6009.1 applies to property purchased outside this state, stored in California and subsequently transported to the rig for use solely outside this state. 6/8/95.

570.1170 **Race Horses.** The training of a horse is a use. Therefore, when training occurs outside the state for more than three months, there has been a substantial out-of-state use of the horse preventing the application of use tax even if the horse is first raced in California.

If the horse trains out of state, comes into California in less than 90 days, and is first raced here and then removed from the state and it does not return for a year, use tax also would not apply. This is the case both when the owner is an out-of-state resident or in-state resident who does not maintain any stables in California. 1/21/66.

570.1173 **Storage In-State of Property Usable Only at an Out-of-State Point.** A taxpayer with facilities both inside and outside California purchased custom equipment outside the state for use in a facility being constructed outside California. Construction of the facility was delayed such that the fabrication of the custom equipment was completed before the facility was prepared to receive it. Accordingly, the equipment was shipped to the taxpayer in California for storage pending delivery for installation at the out-of-state facility. It was in fact ultimately shipped to the out-of-state facility and permanently installed there. The equipment was specifically designed and intended for use at the out-of-state

USE OF PROPERTY, ETC. (Contd.)

facility. The taxpayer had no facility inside California that could utilize the equipment or that was sufficiently compatible with the equipment as to permit testing of the equipment or training of personnel to operate the equipment.

The storage of the equipment is excluded from the use tax under section 6009.1 of the Revenue and Taxation Code. 9/2/76.

570.1180 **Testing.** The testing of equipment in this state which is not used in production here and is subsequently used solely outside this state meets the requirements of Section 6009.1 for exemption from use tax. 9/14/64.

570.1182 **Testing to Destruction.** The testing to destruction of property purchased ex-tax for resale and then removed from the production line for testing does not result in a use tax liability. The fact that the customer specifically requested the testing and was charged a separate price for the testing does not alter this conclusion.

If following the testing, an entire production lot was junked, no use tax would apply to the cost of those junked items. 2/18/75.

570.1200 **Transportation.** The use tax does not apply to off-highway trucks purchased from an out-of-state manufacturer for use by the buyer in another state even though delivery of the trucks was made to the buyer in California, who then transports the trucks to the point of use. Such transportation is excluded from the definition of storage and use under Section 6009.1 of the Sales and Use Tax Law. 4/13/64.

(e) INSTALLATION; REPAIRING

570.1220 **Aircraft—Installation of Interior.** A new airplane purchased out-of-state is brought to California for the sole purpose of having an interior installed. Upon completion of the installation, the airplane is to be delivered to the purchaser out-of-state without any other use or storage here. Installation of the interior is a step in the manufacturing process necessary to put the airplane in a functional condition. Assuming that the airplane is put to its first functional use outside California, the period during which the airplane is here while the interior is being installed will not be considered for use tax purposes. Thus, the airplane will be subject to use tax only if it re-enters California within ninety days of its completed delivery and thereafter is principally used here during the ensuing six months. 11/4/66.

570.1243 **Aircraft Refurbishing.** An out-of-state company purchases a used commercial aircraft which is delivered outside California with title and possession transferring out of state. Shortly after the purchase, the first functional use of the aircraft is transporting representatives of the purchaser to another location outside California. Prior to ninety days from the date of purchase, the aircraft is flown to California for refurbishing which includes the installation of a new interior to modify the aircraft for noncommercial use. The refurbishing in California will take more than six months to complete. Upon completion of the refurbishing, the aircraft will be delivered to the purchaser outside California. Thereafter, the aircraft will be used noncommercially, solely outside the state.

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The installation of an interior in an aircraft is the incorporating of tangible personal property into other tangible personal property. Accordingly, the act of installing the interior does not constitute ''storage'' or ''use'' of the aircraft when the aircraft is to be immediately transported outside California and thereafter used solely outside this state. If the sole utilization of the aircraft in California will be that of installing a new interior, the use tax will not be applicable pursuant to Regulation 1620(b)(5). The transportation of the aircraft into California under its own power will also be excluded from the term use. 5/7/86.

570.1260 **Drawings and Instructions.** Certain equipment was shipped from out-of-state factory to customer in another state. The instructions and drawings for the purpose of installing such equipment were sent to the California office of the customer. The latter material will subsequently be sent by the customer to their out-of-state location for use in installation of the equipment.

The use which the customer makes in California of such instructions and drawings determines their taxability. If merely retained in the California office and then sent out-of-state for use, the use tax would not apply. If, however, the drawings and instructions were utilized in instructing engineers or workmen in California, preparatory to installation of equipment, a taxable use would result. 3/4/53.

570.1280 **Lumber.** The use of lumber produced by a sawmill in the course of its operations but used in repair and additional construction by the mill at its own plant is a taxable use. If the logs from which the lumber was obtained were purchased in California presumably they were purchased for resale and resale certificates given. In that event the use of a portion of such lumber for repair and construction at the mill is a use other than for resale and tax for self-consumed property is payable. If the logs were purchased outside of California for cutting into lumber and partially used as above, that portion would be subject to use tax.

The measure of the tax is the purchase price to the sawmill of the portion of the logs from which the lumber used is cut. 1/14/53.

570.1300 **Unsuccessful Repairing.** If a person purchases tangible personal property intending to use it and attempts to repair the property to make it suitable for use but the reconditioning effort fails and the item is sold in the regular course of business by that purchaser without being actually put into service, the efforts to repair do not constitute a taxable use. 4/1/54.

(f) LOST OR DESTROYED PROPERTY

570.1340 **Business Losses.** Property lost in operating a bar, due to fire, theft, breakage, spillage, or otherwise not resold, but without there having been any intervening taxable use, is not subject to tax. 12/15/52.

570.1360 **Destruction of Defective Property.** A TV cable bought from an out-of-state vendor for use in California was stored for two years in California and subsequently destroyed by the buyer because the cable was allegedly defective. Use tax was applicable to the purchase price of the cable even if the cable was voluntarily destroyed before it was used for the purpose it was bought,

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because ''use'' included any exercise of right of ownership over the cable. Storage and voluntary destruction of the cable were acts incident to the exercise of the right of ownership. The price of the cable could not be excluded as ''Defective Merchandise'' because there was no evidence that the cable was defective. The amount paid by the vendor to the buyer pursuant to the settlement agreement was not a refund due to defective cable. 12/18/69.

570.1380 **Destruction of Property Purchased for Resale.** The deliberate destruction of goods purchased for resale is not a taxable use when the goods are not suitable for their intended purpose and the purchaser has sound business reasons for destroying the goods rather than marketing them. 10/23/64.

570.1400 **Production Loss—High Quality Testing.** Items selected from a production run for high quality testing, a greater degree of testing than is normally used for quality control, entail no tax consequences and are treated as a production loss the same as quality control test samples or defective items which are removed from the production and destroyed. The theory is that production involves certain losses and that items removed from production are not really self-consumed by the taxpayer. 6/4/64.

570.1413 **Repairing Before Removal.** A person purchases a vessel from a nonretailer with the intention of using it outside of California. The vessel remains in California for extensive repairs for an 18 month period. The period during which the vessel is being repaired does not preclude the application of section 6009.1. If, after the repair, the vessel is removed from California for use solely outside the state, the exclusion provided by section 6009.1 is applicable and the purchase of the vessel is not subject to use tax. 12/1/88.

570.1420 **Replacement of Damaged Government Property.** A firm's purchase of cable material and subsequent transfer to the United States Navy in order to replace the property which this firm previously had damaged constitutes a taxable ''use'' under Section 6009. 9/17/64.

(g) LEASING

570.1440 **Carriers.** Use tax liability is not incurred where a certificated carrier sells an airplane to a noncertificated carrier (delivery being made at a point outside the state) who, after bringing it into this state to be overhauled, transfers possession to a lessee at a point outside this state, who flies it on an overseas revenue flight with no intention of flying the airplane back to California; for although the use of the plane by the lessee for the revenue flight is attributable to the lessor, the principle use of the plane is made outside of the state. 10/4/60.

570.1460 **Carriers.** A and B, both common carriers, are considered to have made use of equipment where: A and B purchased equipment out-of-state; A and B leased the equipment to C, a company jointly owned by A and B; and C subleased the equipment on a daily rental basis to A, B, and other carriers, some of whom physically used the property in California. But if a lessee or sublessee takes

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delivery of property at an out-of-state point and thereafter uses the property in California exclusively in interstate commerce, the use tax is inapplicable. 7/29/64.

570.1480 **Leased Back Equipment.** Where a California seller sells its operating equipment and leases it back, the equipment being out-of-state when title passed, the sales tax does not apply, but the use tax would apply as to such equipment which was leased back and received its principal use in this state after the sale. The seller would be liable for the amount of use tax required to be collected from the purchaser-lessor. 3/16/55.

570.1500 **Locomotive.** When a locomotive is purchased outside of California and is leased by the purchaser to a railroad company which uses it in for-hire transportation of property into California where within 90 days after purchase the purchaser takes possession of the locomotive and then uses it solely in interstate commerce, in and out of California although principally in California, no sales tax applies since the purchase is outside of California and no use tax applies since the property is purchased for use in interstate commerce, placed in use in interstate commerce prior to its entry into this state, and is thereafter used continuously in interstate commerce. 8/1/78.

570.1520 **Out-of-State Use of Leased Property.** A lessor purchases tangible personal property (none of which is mobile transportation equipment) for resale from suppliers both inside and outside California. The first lease is at a location outside California. Following termination of this first lease, the lessor brings the property into California, not for lease to another lessee, but for use in the lessor's own operations in California.

If the property was purchased by the lessor outside California, and does not enter California within 90 days of the start of the out-of-state lease, the lessor's use of the property in the lessor's own operations in California is not subject to use tax.

If the property was purchased by the lessor inside California, and did not reenter California until after six months from the start of the out-of-state lease (Section 6009.1), the lessor's use of the property in the lessor's own operations in California is not subject to use tax. 3/17/88.

570.1540 **Out-of-State Use by Lessee.** A truck will not be subject to the use tax where a California lessor enters into an agreement with an out-of-state lessee to lease a truck for 36 months under a pure lease and the truck will be picked up by the lessee in another state, and the lessee will drive it to his home state for use there for the leased period. 8/10/62.

(h) CREDIT FOR TAX IMPOSED BY OTHER JURISDICTIONS

570.1603 **Arizona Tax.** The Arizona tax is imposed upon every person engaging within the state in the business of leasing or renting tangible personal property. As a business privilege tax, the Arizona tax qualifies as a retail sales tax for purposes

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of section 6406. Therefore, a lessee who has paid the lessor the Arizona tax for leased property situated in California can offset that tax against the use tax based upon the rentals payable. 9/18/70.

570.1617 **Credit for Previous Transactions.** A Nevada business made sales in Nevada to California consumers. It collected California use tax and remitted it to the Board. The state of Nevada later imposed a sales tax on the same transactions. The business may not take a credit for Nevada sales tax on these past sales against California use tax on future transactions. Under section 6406, credit for Nevada tax can only be taken by a purchaser.

For convenience purposes, a Nevada retailer who is required to collect the California use tax may take the credit, but only on the same transaction for which the California use tax was collected. Under these circumstances, the conditions of section 6406 are met in that the purchaser pays the Nevada tax reimbursement and gets the benefit of the credit against the California use tax with respect to the particular property that is sold. 8/25/69.

570.1623 **Credit For Tax Imposed By Other States.** A vehicle is leased in a state that imposes on the lessor a tax that must be paid upon the inception of the lease. The vehicle is relocated to California by the lessee. Unless the lessor has paid California use tax or California sales tax reimbursement, a ''purchase'' as defined in section 6010(e)(5) results. When a lease is a purchase, California tax applies measured by rentals payable for the period during which the vehicle is located in this state. The applicable tax is the use tax which is due from the lessee, although it must be collected and paid by the lessor. No credit for tax paid to another state is allowable in this situation because section 6406, which authorizes such credit, allows it only in situations in which the tax of both states has been paid by the same person. Where the other state's tax is imposed on the lessor, the credit is not allowable since the California use tax is imposed on the lessee.

Even if the other state's law permitted the tax to be paid on rentals, no offsetting credit would be allowed unless the other state required that tax payments continue to be made while the vehicle was in California. If such tax is imposed while the property is in California, a section 6406 credit is available for the period the vehicle is in California. 8/15/90.

570.1625 **Credit For Tax Due In Other State.** Where it is established that a use tax has been paid to another state and such liability arose prior to the use in California that gave rise to California use tax liability, the taxpayer is entitled, under Section 6406, to offset the amount of the other state's tax against that due in California. 4/24/72.

570.1630 **Credit for Tax Paid to Another State.** When a taxpayer is entitled to a credit or refund of tax paid to another state, his/her obligation for payment of that tax (to the other state) ceased to exist. In such cases, the credit allowed under Section 6406 for the tax paid to that other state is not available. This applies regardless of whether the taxpayer actually claims the credit or refund from that other state. 3/29/71.

USE OF PROPERTY, ETC. (Contd.)

570.1635 **Deliveries From Storage.** A taxpayer manufactures, prints, and purchases for resale business forms and supplies. The taxpayer stores the merchandise in its warehouses and ships the merchandise, as needed, by common carrier to customers in California and in other states. Some customers periodically order merchandise to be stored in the warehouse until needed. A customer may agree to a specific time limit for the storage of merchandise. The taxpayer may not know where specific merchandise so stored will be shipped until instructions are received from the customer. Some customers are billed for the merchandise when it is received for storage at the taxpayer's warehouse. Others are billed when the merchandise is actually shipped to the customer. The contract provides that title passes upon full payment.

When merchandise is shipped from an out-of-state warehouse to a California customer, California use tax would apply. If the customer incurs tax or tax reimbursement liability in the other state, the customer is allowed a credit for the tax or tax reimbursement liability actually incurred. However, if tax was mistakenly paid to the other state, no credit would be allowed.

If shipment is made from a California warehouse to a customer's location outside the state and the contract specifically requires delivery to the out-of-state location, the tax will not apply even though title may have passed in California. This result is valid only if the purchaser is not authorized under the contract to direct that the property be diverted to a California destination.

If a shipment is made from a California warehouse to a California customer located in a different tax district, the applicable district tax is that of the destination district if the taxpayer is required by the contract to ship the merchandise to the customer in the other tax district.

If it is unknown at the time of the contracting whether merchandise will be shipped instate or out of state, the application of tax will depend on the time of title passage. Under the contracts provided, title passes upon full payment. Accordingly, if the customer is billed when merchandise is delivered to the taxpayer's warehouse, tax will apply at that time. If the customer is billed at the time that the taxpayer makes shipment, tax will apply at that time if the merchandise is shipped to a California location. Also, when billing takes place at the time of shipment, no tax applies if the merchandise is shipped out of the state pursuant to the contract of the sale. 8/26/94.

570.1640 **Foreign State Tax on Storage.** A foreign state provides that use tax applies to the temporary storage of goods inside that state for sales in the regular course of business outside that state. The credit provided for under section 6406 of the Revenue and Taxation Code applies only against California use tax due on the owner's own use of the property in California.

The tax in the foreign state is a tax imposed on the retailer for storing property in that state. The retailer may not take a credit for that tax against a sales tax liability it incurs in California, nor can it claim a credit against any California use tax it is required to collect, since the tax imposed by the foreign state is not imposed on the sale to or use by the California consumer. The tax imposed in the foreign state was on the retailer's purchase and use of the property in that state.

USE OF PROPERTY, ETC. (Contd.)

The transaction being taxed in California is a different transaction, that is, the subsequent sale and purchase of the goods. A credit for tax paid to another state would be available only if the tax had been paid on this transaction. 11/29/94.

570.1660 **Lessee.** A lessee who leases equipment from a Nevada dealer and who brings the equipment into California for use in California must pay tax measured by the rental price of the equipment, unless the lessor of the equipment has paid California sales tax reimbursement or use tax with respect to the property. A credit will be allowed against the California tax only if the lessee himself pays to the lessor, or to Nevada, the Nevada sales tax or use tax or sales or use tax reimbursement for the periods that the equipment is present in California. 7/17/69.

570.1662 **Lessee-Credit for Tax Paid to Texas.** A lessee entered into a lease of a vehicle in Texas and thereafter moved to California, bringing the vehicle with him. The lease contract showed an amount of $3,147.38 in "rental tax" paid to the state of Texas.

In Texas the tax is imposed on the lessor although the lessee may end up bearing the ultimate economic burden. In California, the use tax is imposed on the lessee. Since the tax is imposed on a different person (the lessor), the Section 6406 credit is not available to the lessee. Furthermore, the Section 6406 credit is not allowed against taxes measured by the periodic payments due under a lease to the extent that the taxes imposed by the other state were also measured by periodic payments made under the lease for a period prior to the use of the property in this state.

Accordingly, the lease of the vehicle is subject to California use tax for periods in which the vehicle is in this state. 3/16/95.

570.1667 **New Mexico's Gross Receipts and Compensation Tax.** The State of New Mexico's Gross Receipts and Compensation Tax qualifies as a state sales and use tax for which California will grant credit under section 6406. 1/5/84.

570.1670 **Ninety Day Rule.** A person purchases tangible personal property outside California, paying tax reimbursement or tax with respect to the purchase in the state of purchase. The buyer leases the property outside the state for more than 90 days and then brings the property into California for lease in this state. The buyer claims a credit for the tax reimbursement or tax paid in the other state, intending to collect and pay use tax on rental receipts.

The lease of the property outside the state for more than 90 days creates a presumption that the property was not purchased for use in this state. The presumption could be rebutted by the buyer and the buyer would then be entitled to a credit against his or her own California tax liability. However, where tax is paid on rental receipts, the tax is a use tax on the lessee. Since there is no tax liability of the buyer, there is nothing against which to apply a credit for the out-of-state tax or reimbursement which was paid by the buyer. 1/21/69.

USE OF PROPERTY, ETC. (Contd.)

570.1673 **Person Entitled To Credit.** A person must pay the sales tax directly to another jurisdiction in order to take credit under section 6406. A claim that the person's agent paid the sales tax must meet the conditions that an agency exists by fulfilling the conditions as set forth in Regulation 1540(a)(2)(A). 5/29/86.

570.1675 **Prefabricated or Modular Non School Buildings—Purchases of Materials.** Contracts to furnish and install prefabricated or modular buildings, which are not factory-built school buildings, are construction contracts. With respect to sales of materials to the contractor made out of state, these transactions would not be subject to California sales tax. However, as the consumer of the materials furnished and installed in the performance of a construction contract in this state, the installing contractor will owe California use tax on the cost of the materials to it. The installing contractor may claim a credit under section 6406 against the amount of California use tax it owes to the extent it has paid a retail sales or use tax, or reimbursement therefor, with respect to that property imposed by another state. 2/27/98. (M99–1).

570.1677 **Taxes Paid to Another State.** A California dealer sold a vehicle to a Utah company which furnished a resale certificate. The Utah company leased the vehicle to a California resident and states that Utah tax was paid on the lease payments.

The Utah company is required to collect use tax from the California resident since the Utah company is a retailer deriving rentals from a lease of tangible personal property situated in this state and is thus engaged in business in this state. The California resident, as the consumer, is also liable for the use tax. The Utah Code provides that tax need not be paid if the leased property is used exclusively in a foreign state. Therefore, credit for tax paid to another state (section 6406) is not allowed since Utah law does not impose a tax on the rental to the California resident. 8/25/75.

570.1680 **Third Party, No Credit for Tax Paid by.** Washington State sales tax paid by an out-of-state parent corporation on a purchase of a vehicle could not be applied as a credit to California use tax due on the same vehicle sold by the parent corporation to its California subsidiary. Payment of another state's sales tax by one corporation cannot be applied as a credit against a California use tax liability of another corporation. 5/25/70.

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575.0000 VEHICLE ENGINE EXCHANGES *See Installing, Repairing and Reconditioning in General.*

580.0000 VEHICLES

Loans for driver education, see also Demonstration, Display and Accommodation Loans of Property Purchased for Resale. Use tax, see also Use of Property in State and Use Tax Generally; Vehicles, Vessels, and Aircraft.

(a) GENERALLY

580.0008 **Application for Apportioned Registration with DMV.** An application for apportioned registration with DMV is not an application for registration for purposes of section 6292(c). Therefore, a purchaser is not relieved from the obligation to file a return where the purchaser makes an application for apportioned registration to the DMV. The DMV application for apportioned registration does not request the necessary information to constitute a use tax return. Thus, the filing of an application for apportioned registration (where use tax is not collected) cannot relieve a purchaser from the obligation of filing a return and cannot thereby trigger the three-year statute of limitations under section 6487(a). 10/21/96.

580.0010 **Auctioneers Sale of.** Sales by auctioneers of vehicles that are not required to be registered under the Vehicle Code, i.e., to servicemen who will register them in their home state or to out-of-state residents who will remove the vehicles on one-way trip permits are subject to sales tax notwithstanding the fact that the auctioneer is not a registered dealer, manufacturer or dismantler. 12/23/71.

580.0013 **Automobile Kit—Unassembled.** A California resident who purchases an unassembled automobile kit from an out-of-state retailer for use in California is liable for use tax measured by the purchase price of the kit. Since the item was purchased for use in California, the California resident (purchaser) should contact the local Board of Equalization district office and pay tax measured by the purchase price of the unassembled automobile kit. Once the tax liability has been paid in full, the Board's local district office will issue Form BT-111, Certificate of Motor Vehicle or Mobilehome Use Tax Exemption. The purchaser should then submit the Form BT-111 to the Department of Motor Vehicles at the time of the registration of the vehicle. 3/29/96.

580.0020 **"Breaking In."** The breaking in of foreign cars by a dealer driving them for 500 miles for no other purpose, does not require payment of tax upon the sale to dealer. Such breaking in of the car is nothing more than preparation of the car for delivery to the customer and is not sufficient in itself to subject the dealer to payment of use tax on the theory that the car was used prior to reselling it. 9/5/50.

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580.0030 **Brokerage Sales of Vehicles.** A licensed or certificated dealer acting solely as an intermediary to bring together a seller and a buyer of a mobile home and who provides the Department of Motor Vehicles with the notice of vehicle transfer is required by Revenue and Taxation Code Section 6275(b) to pay sales tax computed on the sale price of the vehicle transferred. Section 6275(b) does not impose liability on the dealer for sales tax computed on the sale price of the awnings, skirting, loose furniture, and other property the seller transfers with the vehicle. The taxability of those items will depend on whether the owner/seller of such items is a retailer. 3/15/77.

580.0040 **Caravan Delivery to California.** Where an automobile dealer agrees to purchase for resale a number of vehicles with delivery to him at the factory in Michigan, and such vehicles are licensed in California before being driven in caravan from Michigan to California, no use tax will apply provided no additional use is made of the vehicles other than for demonstration and display. 7/16/54.

580.0060 **Caravan Permit.** Sale and delivery of automobile in this state is not exempt as sale in interstate commerce merely because purchaser transports it to an out-of-state point under a caravan permit. 6/22/50.

580.0075 **Collection of Use Tax by Department of Motor Vehicles (DMV).** Use Tax is not collected by the Department of Motor Vehicles on ''transfer only'' transactions. The ''transfer only'' transactions arise in two factual situations:

(1) A vehicle, such as a forklift, is titled with DMV but not registered for operation, because the vehicle is operated only off the highway such as in a warehouse or on a farm.

(2) The owner of a vehicle takes the vehicle out of state for operation and registers the vehicle out of state but retains title in California.

When a person sells a vehicle under either of the above situations, the sale is of a vehicle which is not ''required to be registered.'' Accordingly, section 6292 is not applicable and the DMV should not collect the use tax. 2/22/89.

580.0080 **"Courtesy Deliveries" to Consumer by Owner, Former Owner of Factor.** An automobile is sold to an out-of-state dealer with delivery being made to the out-of-state dealer's customer through a California dealer. The customer is engaged in the business of leasing automobiles and operates in California under a seller's permit. Under these circumstances a resale certificate may be taken from the customer. 9/14/55.

580.0100 **"Courtesy Deliveries" to Consumer by Owner, Former Owner of Factor.** Where a California dealer, acting for an out-of-state dealer, delivers automobiles in California to local employees of a foreign concern which leased the automobiles from the out-of-state dealer's customers, the California dealer is liable for sales tax pursuant to Section 6007. 1/25/61.

VEHICLES (Contd.)

580.0112 **Serviceman.** A serviceman stationed overseas purchased a car through a sales organization, designated an agent to accept delivery at an overseas point who shipped the vehicle to him in California through a California dealer. The purchase contract is entered into before the buyer receives orders transferring him to California. No party to the transaction is engaged in business in California except the delivering dealer.

This sale is not subject to sales tax because title to the car passed outside California upon delivery to the buyer's agent. The purchase of the auto is not subject to use tax under section 6248 because at the time of purchase the buyer had not received orders transferring him to California. 10/24/75.

580.0120 **"Courtesy Deliveries" to Consumer by Owner, Former Owner of Factor.** Where a local plant of a manufacturer delivers an automobile in California pursuant to a contract of sale made by a foreign dealer sales tax applies under the second paragraph of Section 6007. 6/16/53.

580.0140 **"Courtesy Deliveries" to Consumer by Owner, Former Owner of Factor.** The sales tax applies to ''courtesy delivery'' of a car purchased from an out-of-state dealer but delivered by a California dealer to a serviceman stationed in California. The fact that the serviceman may be transferred some day to another state does not render tax inapplicable. 4/13/64.

580.0160 **"Courtesy Deliveries" to Consumer by Owner, Former Owner of Factor.** Where a licensed California dealer makes a ''courtesy delivery'' of a motor vehicle pursuant to a retail sale made by a person who is not a licensed California dealer, and the sale and registration is reported to the Department of Motor Vehicles on the Dealer's Report of Sale form, the dealer will be liable for sales tax measured by the retail selling price of the vehicle. 7/17/64.

580.0170 **Court-Ordered Transfer of Vehicles.** Section 1146 (c) of the Bankruptcy Code does not exempt from tax the transfer of vehicles for which clearance documents are required before DMV will effect registration. That section specifies that certain instruments of transfer may not be taxed under any law imposing a stamp tax or similar tax. Neither the sales tax nor the use tax is a stamp tax or similar to a stamp tax, as those terms have been defined and interpreted in various legal references and court cases, and the required clearance is not an instrument of transfer. 3/6/92.

580.0186 **Delivery of Vehicles Out of State Followed by Return in Interstate Commerce Use.** A retailer delivers vehicles to a California resident at a point outside of the state. To avoid liability for collecting use tax, the retailer must obtain a statement from the buyer that the vehicles will not be used in California or a statement that any use of the vehicles in California will be in interstate commerce. Failure to obtain and retain a statement puts the burden of proof on the retailer to show that the property was not purchased for use in California or that use in California was a use ''continuously in interstate commerce.'' To determine whether or not the vehicles were purchased for use in California, the test

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prescribed in Regulation 1620 is used, i.e., the use during the first six months after the vehicles re-enter California is examined. 3/19/73.

580.0190 **Dump Truck Bodies Not "Trailers."** The exemption provided in section 6388.5 is limited to the sale or use of certain described trailers or semi-trailers under certain conditions, all of which are contained in that section. The term trailer is defined in Vehicle Code section 630 as ". . . a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle . . . "

A dump truck body attached to the cabin chassis fails to meet this definition in that it does not rest on a structure of its own, but rests on the chassis, it is not drawn by but is carried on the motor vehicle, and it rests upon another vehicle, i.e., the cab chassis. A truck body does not qualify for exemption as a trailer under section 6388.5. 3/8/85.

580.0200 **Evaporative Coolers Installed in Mobile Homes.** A contractor has a lump sum contract to furnish and install evaporative coolers on mobile homes. The mobile homes are not on permanent foundations but are set on steel piers in a mobile home park.

Since the mobile home is not installed on a permanent foundation, it retains its status as tangible personal property. Accordingly, the dealer is required to pay sales tax on the entire retail selling price to the customer. Installation charges are exempt. 5/31/91.

580.0220 **Foreign License Plates Immaterial.** Sales tax is applicable to the receipts from the sale of an automobile delivered to the buyer in California, regardless of the fact that out-of-state license plates are obtained for the car. 6/24/53.

580.0228 **Lease Buy-Out and Immediate Resale.** A lessee exercised his option and purchased a vehicle which he was leasing and received title on March 25, 1994. When he bought the vehicle, the lease was at midterm. The lessee sold the vehicle to an out-of-state buyer the same day. The vehicle was not used between March 25, 1994, and March 26, 1994. The out-of-state buyer had a trucking company pick up the vehicle at the lessee's house on March 26, 1994, and deliver it to the train station for shipment. The lessee notified the California Department of Motor Vehicles of the sale on March 30, 1994, by submitting a signed "release of liability" form.

Based on the information provided, if the contract was a true lease, the lessee's purchase of the vehicle per the lease buy-out was a nontaxable purchase for resale as it was immediately resold without any use being made of the vehicle in California. 6/10/94.

580.0230 **Low Emission Motor Vehicles and Retrofit Devices.** Pursuant to Section 6356.5(a), Revenue and Taxation Code incremental costs of the sale of and the storage, use, or other consumption in this state of new low emission motor vehicles certified by the Air Resources Board are exempt from tax

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provided the incremental cost is separately stated on the manufacturer's label affixed to the vehicle, the manufacturer's invoice to the retailer, and the retailer's contract of sale with the purchaser. Incremental cost is the difference between the actual price of a new low emission vehicle and the manufacturer's suggested retail price for a comparably equipped conventional fuel vehicle.

Pursuant to Section 6356.5(b), Revenue and Taxation Code, the sale of, and the storage, use or other consumption in this state of any retrofit device is exempt from tax provided low emission labeling appears on the device itself or its packaging, the documentation from the manufacturer to be retained by the retailer upon sale, and the retailer's contract of sale with the purchaser.

A retrofit device is exempt when sold as a kit or when installed on a customer's vehicle. The labor to install will generally qualify as exempt installation or repair labor. If the dealer purchases a vehicle, installs the retrofit device and sells the vehicle with the device, the vehicle does not qualify as a new low emission vehicle, nor is it a sale of a retrofit device, and the entire selling price of the used vehicle is a taxable transaction not exempt pursuant to Section 6356.5(a) or (b). 11/13/92.

580.0231 **Low-Emission Motor Vehicles and Retrofit Devices.** The exemption authorized by section 6356.5 applies to only two situations: The incremental cost of a NEW low-emission motor vehicle and the cost of the device itself when sold to a consumer who converts his own vehicle, or to a retailer who sells and installs it on the consumer's vehicle. The exemption does not apply to the subsequent sale of a used car that originally qualified for the new car low-emission exemption, nor to a used vehicle purchased by the retrofit device company, retrofitted and then sold. Neither of these qualify as the sale of a retrofit device per se. 4/10/92.

580.0240 **Measure of Tax** not reduced where auto damaged before entry into this state. 4/6/51.

580.0260 **Members of NATO Forces.** A use tax on the purchase of an automobile by a member of a NATO country's armed forces is proper because a NATO Status of Forces Agreement only exempts NATO military personnel from property taxes and not from excise taxes, such as the use tax. 6/5/69.

580.0270 **Members of NATO Forces.** Use tax was properly imposed on a car purchased out-of-state and used in California by a foreign air force officer who was working under the NATO Status of Forces Agreement. The NATO agreement only provides exemption from taxes based on residence or domicile and the use tax is based on ''storage, use or other consumption in this state.'' 8/24/70.

580.0274 **Mobile Homes Installed as a Residence.** A request was made to provide an analysis of the essential difference between Revenue and Taxation Code Sections 6012.8 and 6012.9 as the sections pertain to subdivision (b)(3)(B)(1) of Sales and Use Tax Regulation 1610.2.

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Section 6012.8 provides generally that the retailer of a new mobile home is a retailer/consumer if the mobile home is sold for installation on a foundation system pursuant to Health and Safety Code Section 18551 and is thereafter subject to property taxation.

Under the provision of Health and Safety Code Section 18551, the foundation system is such that once the mobile home is installed, it is deemed an improvement to real property.

For sales tax purposes, a person installing mobile home accessories such as window awnings, skirting and air-conditioning units on such mobile home is a construction contractor. The application of tax is provided by Sales and Use Tax Regulation 1521 and Regulation 1610.2(d).

Section 6012.9 provides generally that the retailer of a new mobile home is a retailer/consumer if it is sold for installation pursuant to Health and Safety Code Section 18613 and is thereafter subject to property taxation.

Under the provisions of Health and Safety Code Section 18613, the foundation consists of bearing support structures designed to meet certain requirements. A mobile home so installed still retains its identity as a tangible personal property and is the more common installation in mobile home parks.

For sales tax purposes, a person installing mobile home accessories such as window awning, skirting, and air conditioning units on such mobile homes is the retailer of tangible personal property unless the accessories are directly affixed to realty. (Sales and Use Tax Regulation 1610.2(b)(3)(B)(1), 3rd paragraph.) 5/31/91.

580.0275 **Mobile Home Location Value.** If the purchaser is buying not only the mobile home but the lease interest to a specific space the portion of the selling price of that leasehold interest should be excluded from the measure of tax. The price for such rights should be separately stated. 7/6/76.

580.0277 **Mobile Water Purification Units (MWPU's).** A firm used mobile water purification units (MWPU) in providing water purification services. The units were attached to and became an integral part of the semi-trailers. The firm has sold the business and the purchaser believes that the portion of the sales price allocable to the MWPU's is exempt as an occasional sale under section 6006.5(a).

The MWPU's were designed to be attached to the semi-trailers and, upon attachment, the MWPU's were themselves vehicles. Their sale, therefore, could not be exempt occasional sales under section 6367. Since the selling firm was not a ''dealer,'' the applicable tax is the use tax imposed on the purchaser. 11/2/95.

580.0280 **"One Continuous Trip Permit".** When a dealer sells a vehicle and delivers it to a serviceman in this state, the sales tax applies regardless of the fact that the serviceman is ''in transit,'' and secures a ''One Continuous Trip Permit'' from the Department of Motor Vehicles to move the vehicle to a point outside this state. The dealer making delivery in California is the party upon whom the tax is imposed whether he actually makes the sale to the serviceman or makes the

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delivery pursuant to a retail sale made by a dealer not engaged in business in this state, as provided by Section 6007 of the Sales and Use Tax Law. 3/21/66.

580.0300 **One Continuous Trip Permit.** The sale of an automobile to a serviceman in California is not a sale in interstate commerce where the purchaser obtains a one continuous trip permit from the Department of Motor Vehicles, and accompanies the car while it is driven to an out-of-state point by a third party purporting to be the seller's "agent," since the driver is under the authority and control of the owner of the car when he drives the car out-of-state and consequently delivery is not postponed until the arrival at the agreed out-of-state point. 11/28/61.

580.0307 **Out-of-State Delivery of Motorhome.** A California motorhome dealer will make a sale of a motorhome to a California resident who will take delivery out of state. The purchaser will functionally use the motorhome for a period of not less than 90 days outside of California. The vehicle may be registered in California.

Section 6247 creates a presumption as to the retailer that property delivered outside of California to a purchaser known to be a resident of California is regarded as having been purchased for use in California. The section 6247 presumption may be controverted by a statement in writing, signed by the purchaser, and retained by the dealer that the property was purchased for use outside of California. If the dealer takes a section 6247 statement in good faith, the dealer is no longer responsible for collecting use tax even if the purchaser actually purchased the motorhome for use in California. Under such circumstances, the purchaser, of course, would be liable for the applicable use tax. In order to regard the section 6247 statement as being taken in good faith, the dealer must believe that the motorhome is being purchased for use outside this state and be without knowledge of any facts which would put a reasonable prudent business under similar circumstances on notice that the motorhome is being purchased for use in this state. [See Cal. U. Com Code section 1201(19).] If the dealer obtains a section 6247 statement from a purchaser who requests that the dealer register the vehicle in California, and it is subsequently determined that the purchaser purchased the motorhome for use in California, the dealer's good faith acceptance of the section 6247 statement may be questioned.

If the motorhome is functionally used outside of California in excess of 90 days from the date of purchase prior to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, Regulation 1620(e)(2) provides that such use will be accepted as proof of an intent that the motorhome was not purchased for use in California. Therefore, under these circumstances, use tax would not apply. This analysis would apply regardless of whether the motorhome is registered in California. 8/12/96.

580.0310 **Prorate Registration.** The prorate registration of a vehicle in California, in which California is listed as the state in which the vehicle is "base titled," will cause the loss of the exemption provided in section 6388 of the

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Revenue and Taxation Code. According to the Department of Motor Vehicles, a vehicle that is based titled in California must be principally dispatched and garaged in California.

An exemption for a trailer under section 6388.5 would not be lost because of a California base titled registration provided that the exemption is claimed on the basis of use exclusively in interstate or foreign commerce and not on the basis of use exclusively outside the state. 12/2/81.

580.0313 **Registration with DMV Equivalent to Filing a Use Tax Return.** When a person registers a vehicle with the Department of Motor Vehicles, the person also files a form which identifies either that use tax is due and paid or the vehicle's use is exempt from tax. In such cases, a use tax return has been filed and the three-year statute of limitations period starts at the time of such filing. 1/10/96.

580.0316 **Removable Camper on Pickup Truck.** When a pickup truck and a removable camper are purchased from an individual, the value of the camper is excluded from measure of use tax because Vehicle Code section 243 excludes from the definition of ''vehicle'' any camper having one axle. 4/11/91.

580.0320. **Residence of Purchaser.** Where a purchaser of an automobile purchases it outside the state for use in this state, the use tax applies, irrespective of the residence of the purchaser. Ordinarily, where the purchaser is a resident of this state, there is no doubt but what the use tax is applicable. On the other hand, if the purchaser is not a resident of this state, the tax may nevertheless be applicable if in fact the property was purchased for use in this state. 3/31/50.

580.0348 **Sale of Vehicle to a Nondealer Lessor.** A dealer may sell a vehicle (not mobile transportation equipment) to a nondealer leasing company for resale in the form of a continuing sale lease if the vehicle is registered as prescribed by section 4453.5 of the vehicle code in either the name of the lessor or the lessor/lessee jointly. The dealer should take a resale certificate that contains the nondealer's statement that the vehicle is being purchased for resale in the nondealer's regular course of business. 9/10/96.

580.0360 **Servicemen—Date of Receipt of Orders Transferring to California.** If a serviceman takes delivery of a car outside California before he receives orders transferring him to California, no use tax is applicable. The serviceman is also not liable for use tax under Section 6249 of the Revenue and Taxation Code if he arrives in California 90 or more days after delivery of the car outside California, regardless of whether he received his orders before or after delivery of the car because it is presumed that he did not purchase the car for use in California. Section 6249 is not applicable to civilians. 11/6/69.

580.0380 **Soldiers' and Sailors' Civil Relief Act.** When otherwise applicable, the use tax is not prevented from applying with respect to the purchase of vehicles by a serviceman by reason of the Soldiers' and Sailors' Civil Relief Act. This act is regarded as providing relief to nonresident servicemen from the obligation to pay property and income taxes, and not the use tax. 5/4/66.

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580.0393 **Subcontracting of Shuttle Service-Sale of Van.** Company A subcontracted the operation of its shuttle service to Company B. As part of the transaction, it was necessary for Company B to acquire title to one of Company A's shuttle vans and assume responsibility for the vehicle's insurance. Subsequently, Company A decided not to renew the subcontract for the shuttle service with Company B and repurchased the van. The initial transfer of the van to Company B gave rise to a taxable transaction. Likewise, the reacquisition of the van by Company A is also a taxable sale. 8/19/92.

580.0395 **Vehicle Modified for Use by Handicapped Person.** A handicapped person purchased a van from a unlicensed person, intending to modify the van to her needs. The vehicle had been modified to some degree for use by the physically challenged by the previous owner. However, the purchaser was unable to adapt it further to meet her needs and sold it prior to registering it.

A person who purchases a vehicle is liable for use tax even though the person sells the vehicle prior to transferring registration. However, the part of the transfer price attributable to modifications made to enable the vehicle to be used to transport a physically handicapped person is excluded from the amount subject to tax. 10/20/94.

580.0400 **Use Out-of-State.** Neither sales nor use taxes apply to the sale of an automobile to a purchaser who takes delivery at the factory out-of-state and who does not use the car in California.

It is immaterial that the customer may secure California license plates. Such registration, however, makes it incumbent upon the dealer to secure and maintain records which will substantiate the facts of the transaction. 8/31/53.

580.0406.050 **Vehicles not Requiring Registration.** When a person purchases a vehicle which is not registered for operation, and the person obtains only a title transfer from the Department of Motor Vehicles, the use tax does not apply. (Section 6293) However, if a person were to purchase a vehicle under those circumstances to obtain a title only transfer and then shortly thereafter registered the vehicle, the Board would investigate to determine whether the transaction is a sham and, if so, impose use tax. 3/21/96.

580.0406.300 **Automobile Kits.** Sales of automobile kits to individuals who assemble the parts into a vehicle and subsequently register the vehicle with DMV are not sales of vehicles at the time of the sale. Consequently, sales tax applies to the sale of the kit. However, the purchaser who assembles the kit into a vehicle may register the vehicle at DMV without payment of the use tax. 2/11/91.

(b) LOCAL DELIVERIES TO NONRESIDENTS FOR OUT-OF-STATE USE

580.0408 **Auxiliary Dolly.** The statute provides that evidence of out-of-state registration must be submitted to qualify for exemption provided in section 6388. Some states do not require registration of dollies. The Board cannot require evidence of registration when registration is not required. The buyer should furnish an affidavit indicating that registration is not required in the particular state. 4/26/85.

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580.0420 **"Dealer Located Outside This State."** Vehicles purchased from a California dealer do not qualify as vehicles purchased from a ''dealer located outside this state'' even though the purchaser negotiates the transaction with a salesman for the dealer while the salesman is outside this state. Accordingly, the exemption provided by Section 6388 does not apply in such circumstances. 6/14/66.

580.0430 **Dealer at Specified Location.** ''Dealer at a specified location'' as provided in Section 6388.5(b) is interpreted to include any authorized truck trailer dealer in California. The term is not limited to factory branches operated as retail outlets by the trailer manufacturers. 8/17/78.

580.0440 **Factory Branch.** A factory branch located outside California is considered a dealer located outside the state for purposes of determining exemption of sales of trucks and trailers to nonresidents when delivery takes place in state, even though vehicles are manufactured in state. 11/18/63.

580.0460 **"House Cars."** ''House cars'' specifically included within the definition of the term ''passenger vehicle'' in Section 465 of the Vehicle Code are not vehicles of a type included within Section 6388. Accordingly, this section is without application to sales of house cars. 9/13/66.

580.0480 **Movement by Purchaser of Exempt Vehicle.** The requirement of movement of a vehicle out-of-state by the purchaser is satisfied if it is done under his direction. Work done on the vehicle prior to its removal from the state does not cause loss of the exemption. 9/25/63.

580.0520 **Refrigeration Units.** The exemption of trailer coaches purchased for out-of-state use does not apply to refrigeration units for such trailers which are purchased separately from the vehicles. 12/18/63.

580.0540 **Resident for Exempt Trailer Sales.** A corporation having substantial activity and employees in the state is a resident of this state for the purpose of determining the application of the exemption for trailer sales out-of-state use. 9/25/63.

585.0000 VEHICLES, VESSELS, AND AIRCRAFT—Regulation 1610
See also Vehicles. Aircraft exemption, see also Aircraft. Watercraft exemption, see also Watercraft.

(a) GENERALLY

585.0003 **Aircraft and Gliders.** A taxpayer, who operates a glide port, purchased two tow planes (single engine aircraft) and seven gliders. The aircraft and gliders will be used solely in the operation of the glide port. Members of the general public pay a fee for a glide ride.

The tow planes are not being used as common carriers of property or persons. The tow planes are being used to tow property owned by the taxpayer and are subject to tax. The gliders are not powered contrivances and, therefore, are not aircraft as defined in Section 6274. Since the gliders are not aircraft, the

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exemption under Section 6366 for aircraft sold to common carriers does not apply to the sales of the gliders. As such, the purchases of the gliders are also subject to tax. If purchased ex-tax by certifying in writing to the sellers that the aircraft and gliders would be used for exempt purposes, per section 6421 the purchaser must pay sales tax measured by his/her cost of the property, as if they were the retailer making a retail sale of the aircraft and gliders. 4/8/92.

585.0003.500 **Barge.** A barge is a ''vessel'' within the meaning of section 6273 and its purchase is subject to tax. It is irrelevant that subsequent to the purchase it was ''connected to real property by piling rings and pilings.'' 12/14/95.

585.0004 **Broker Transactions.** A broker is a person who arranges transactions between buyers and sellers. The broker never, at any time, has any power or authority to cause title to pass to the buyer and never passes title directly or indirectly or causes title to pass directly or indirectly. A person who meets this definition is not a seller and is not liable for sales tax on brokered transactions. 10/29/75.

(Note subsequent statutory change in effect 1/1/96 re vessels and aircraft—sellers)

585.0004.500 **Delivery of Boat Outside California.** The seller of a pleasure boat agrees to have a broker deliver the boat to the purchaser outside the California waters with the purchaser aboard the boat during its trip out of state. There is no agreement to pass title before delivery and title in fact does not transfer to the purchaser before physical delivery of the boat out of state such as would be the case if there were, e.g., a close of escrow in which the bill of sale were delivered to the purchaser before the delivery of the boat.

Even if the broker represented the seller in negotiating the sale of the boat, if the purchaser is the party who arranges with the broker to deliver the boat, the broker would be acting as the purchaser's agent or representative in taking the boat from California to a point outside of California. Accordingly, the seller's delivery of the boat in California to the broker as the purchaser's representative would be subject to tax.

If the seller hires the broker to deliver the boat and, as the seller's agent, the broker had possession and control of the boat in taking the vessel outside of California, and only gave possession or control of the boat to the purchaser outside of California, the vessel would be regarded as delivered to the purchaser outside California. This is true even if the purchaser was on board the boat on the trip from California to the out-of-state point, as long as the purchaser does nothing that could be construed as controlling the boat, e.g., steering the vessel or acting in any way other than as a mere passenger with no possession or control. 11/19/99. (2000-3).

585.0005 **DMV Report of Sale Not Required.** A lessor of automobiles sells the leased vehicles to the lessees. The Department of Motor Vehicles does not require the lessor to hold a dealer's license for this purpose. The lessor later obtains a

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dealer's license for the purpose of selling formerly leased cars to the public. The lessor must report sales to the public to DMV. Sales tax is due from the lessor on these sales.

DMV does not require the lessor to report sales to the lessees even though it now holds a dealer's license. Accordingly, the tax due on these automobiles is the use tax which the lessee/buyer must pay to DMV at the time of changing registration. 1/19/72.

585.0006 **Due Date of Use Tax—Documented Vessels/Aircraft.** A taxpayer purchased an aircraft on June 19, 1987. The taxpayer did not hold a seller's permit nor did the Board mail a return form to the taxpayer. The due date of the use tax on the purchase price of the aircraft was the last day of the twelfth month following the month during which the aircraft was purchased. The twelfth month following the month of purchase (June 1987) was June 1988. The last day of that month, June 30, 1988, was the due date of the tax. If some of the tax had not been paid by this date, penalty and interest accrues on the tax due. 11/8/95.

585.0008 **Exchange of Property—Sales/Purchase Price.** A person trades a five acre piece of California land worth approximately $8,000 for a Toyota pick-up truck. The truck is worth $7,000 average retail.

When there is an exchange of property, the measure of ''consideration'' for the ''sale'' or ''purchase'' is the property received (for sales tax) or the property paid (for use tax) at the time of sale and delivery of the taxable property sold (sales tax) or purchased (use tax).

If the truck is purchased from a licensed automobile dealer, the sales tax is the applicable tax and the measure of the tax is based on the property received by the dealer (the five acre piece of land worth $8,000).

On the other hand, if the truck is purchased from a private party, the use tax is the applicable tax. The measure of tax is based upon the property the purchaser paid for the truck (the five acre piece of land worth $8,000) and the payment of the use tax is made by the purchaser when he/she registers the truck with the Department of Motor Vehicles. 2/21/86.

585.0020 **Family Exemption.** A sale by stepchild to a stepparent, or vice versa, is not exempt under Section 6285. However, a sale by one to his natural parent and stepparent jointly is exempt if the vehicle is reregistered to the natural and stepparent jointly as evidence of joint ownership. Similarly, a sale made jointly by a natural parent and stepparent to a child of the natural parent is exempt if the vehicle was owned jointly by the selling parents before the sale. 7/26/67.

585.0022 **Family Exemption—Sale by Dealer to Family Member is Taxable.** Under Revenue and Taxation Code section 6275, the sale of a motor vehicle by an individual who holds a DMV dealer's license to that individual's child is not exempt from sales and use tax, regardless of whether the vehicle comes from the inventory of the dealer. For example, if a Toyota dealer sells a Volvo to his or her child, that sale is not exempt because Toyotas and Volvos are the same type of property (i.e., vehicles). However, if the Toyota dealer sells an

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aircraft or vessel to his or her child, that sale would be exempt because a vehicle is not the same type of property as a vessel or aircraft. Similarly, a vessel dealer's sale of a motor vehicle or of an aircraft to his or her child is exempt, but the sale of a vessel to his or her child is not exempt. 11/28/01.

585.0025 **Family Exemption—Transfer by an Association.** An "association" is among the entities within the definition of "person" in section 6005, and every person selling an aircraft is a retailer (section 6275(a)). Since an association is a legal entity separate from its members, the transfer of an aircraft from an association to the mother of one of the two members of the association is not eligible for the family exemption as a sale from child to parent. The transfer is a taxable sale. 2/21/78.

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585.0055 **Hot Air Balloons.** The Board has ruled that a hot air balloon is not an aircraft for purposes of Regulation 1610. The application of tax to the transfer of a balloon is the same as it is to tangible personal property in general. 3/28/91.

585.0060 **House Trailer.** A house trailer located on an Air Force base in California is not required to be registered in California and is, therefore, not subject to use tax when sold as long as the house trailer remains on government property and is not used on public highways. 4/11/69.

585.0080 **Houseboats.** A houseboat, even though not self-propelled, is a ''vessel'' within the meaning of Section 6273 of the Sales and Use Tax Law. Thus, the purchaser of a houseboat from a person not the holder of a seller's permit is liable for the use tax. 4/27/67.

585.0090 **Houseboats and Floating Homes.** A houseboat or ''floating home'' is a vessel within the meaning of Revenue and Taxation Code Section 6273 if it constitutes personal property and is navigable.

The property should be classified as personal property unless it is affixed to the real property in such a manner as to constitute a permanent addition thereto. The property will be presumed to be personal property if the owner does not also own the real property or hold a lease for a term of years substantially equivalent to the life of the houseboat or floating home.

The term ''vessel'' is defined by Revenue and Taxation Code Section 6273 to mean ''. . . any boat, ship, barge, or floating thing designed for navigation in the water . . .'' with certain specified exceptions. The term ''vessel'' includes houseboats and those floating homes capable of navigation under their own power or suitable for normal towing.

Floating homes are vessels without regard to the fact that they may be used as a place of residence and without regard to the nature or number of connections (sewer, water, power) between the floating home and the shore if the floating home, upon being disconnected, is suitable for normal towing.

Floating homes constructed upon reinforced concrete hulls having a rectangular vertical surface in front (as opposed to a ''V'' shaped or cantered bow) are not ''designed for navigation in the water'' but are designed merely to float. Floating homes installed upon plywood pontoons surfaced with fiber glass and open at the top are designed for flotation, not navigation. So, too, floating homes installed upon Styrofoam floats wrapped in polyethylene plastic film are not designed for navigation.

The fact that there is no means of propulsion aboard the floating home is irrelevant in determining whether the floating home is ''designed for navigation.'' So, too, the mere absence of running lights, towing bitts, cleats, or a stern notch for pushing is not conclusive. A floating home may be regarded as a ''vessel'' in the absence of these items.

The fact that a floating home may be required to be registered with the Department of Motor Vehicles as an ''undocumented vessel'' under Vehicle Code Section 9850 is not conclusive as to its classification under Section 6273. A

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floating home may be subject to registration under the Vehicle Code yet not be suitable for normal towing and thus not a ''vessel'' under Section 6273.

Floating homes constructed on concrete hulls, pontoons, or floats of the type described, in accordance with the Uniform Building Code or local construction ordinances are not ''designed for navigation.''

Some boats, ships, or hulls may be designed for navigation when first manufactured. These craft may be converted to residential use and may be connected to shore facilities. This alone does not affect the fitness of the craft for movement through the water. Thus a fishing boat converted to residential use is ordinarily a vessel.

Some units are designed as floating homes from the inception and are not built in a manner suitable for movement through the water. These units are not ''vessels'' under Section 6273.

In summary, houseboats and floating homes are personal property. Their sale is not regarded as a sale of an interest in realty. However, not all floating homes may be classified as ''vessels.'' The sale by a private party of a floating home not qualifying as a ''vessel'' would ordinarily be exempt from tax as an ''occasional sale.'' 8/31/78, 2/26/81.

585.0093 **Implement of Husbandry.** A heavy duty, three axle truck remanufactured exclusively for the transportation and discharge of feed and/or fertilizer on farms and not for the transportation of people or property on highways constitutes ''implements of husbandry.'' Such vehicles are exempt from DMV registration but can be subject to DMV identification if the owner desires. Accordingly, the sale of these vehicles in California by a dealer is subject to the sales tax even if the dealer does not possess a California Department of Motor Vehicles License. 10/27/87.

585.0095 **Lessor-Retailer's Sale of Vehicle to Lessee.** A lessor-retailer is required to pay sales tax, with respect to the retail sale of a motor vehicle to the lessee, when the lessor-retailer files a ''Report of Sale''. If a ''Report of Sale'' is not filed, the lessee is required to pay the use tax when the vehicle is registered with the DMV. 5/8/90.

585.0100 **Measure of Tax.** The action of the Department of Motor Vehicles in requiring payment of use tax measured by the fair market value of purchased used vehicles is not conclusive of the measure of tax so as to prevent assessment of a deficiency measured by the difference between the fair market value and an actual higher sales price. The term ''sales price,'' as used in law Section 6276, is defined in Section 6011 as ''the total amount for which tangible personal property is sold.'' The Section 6276 presumption that the fair market price equals the sales price is expressly subject to rebuttal, and that right of rebuttal is available to the state as well as to the taxpayer. The provision of Vehicle Code Section 4750(d) that payment of tax according to its terms will constitute ''full compliance'' with the Sales and Use Tax Law relates only to the Section 4750(d) provision for ''rounding off'' dollar fractions, not to DMV determination of fair market value. 5/21/69.

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585.0110 **Mobilehomes.** Under the mobilehome legislation effective July 1, 1980, a sale of a mobilehome to the United States would be within the exemption provided by Section 6381. This conclusion follows from Sections 6012.8 and 6012.9, as amended, which state that "The retailer shall be considered to be the consumer for purposes of this part if the sale by the retailer would otherwise have been subject to sales tax . . ." As the sale of the mobilehome to the United States would not otherwise have been taxable, the seller of the mobilehome is the retailer, and the exemption of Section 6381 applies. The same rationale would exempt sales of mobilehomes which the retailer is required to, and does, ship to a point outside California by means of his own facilities or common or contract carrier. 10/24/80.

585.0160 **Ocean Liner.** The sale of the ocean liner, Queen Mary, does not qualify as an exempt occasional sale. The liner is a vessel as defined for use tax purposes and the retail sale of a vessel is specifically excluded from being an exempt occasional sale. 8/22/67.

585.0163 **Persons In The Armed Services Under Orders.** A person in the armed services under orders which requires his presence outside of California who purchases a vehicle outside the state while under said orders and prior to receiving orders to some station, base, or port in California is presumed not to have purchased the vehicle for use in California. In other words, he will not be subject to the presumption under section 6248.

A person in the Navy who is stationed aboard a carrier or other ship that is outside the continental United States under orders will be deemed to be personally under said orders since individual or collective orders are not issued. Thus, the orders that call for the ship to return to the United States will be controlling in the same manner as if they were personally issued to the individual. 8/21/72.

585.0173 **Refueling Vehicles.** Effective July 3, 1984, Vehicle Code section 4021 was enacted which exempted from registration any vehicle used exclusively for refueling aircraft, if the vehicle is only operated on a highway for a distance not exceeding one-quarter mile each way to and from a bulk storage facility. 12/14/93.

585.0175 **Retail Sales of Vehicles not Required to be Registered Under Vehicle Code.** The condition that a motor vehicle be one that is required to be registered under the California Vehicle Code is an essential element of the exemption from sales tax provided by Revenue and Taxation Code Section 6282. Since vehicles sold by auctioneers to out of state residents are not required to be registered under the Vehicle Code, the sales constitute retail sales subject to the sales tax. 2/23/72.

585.0180 **Retailer, Person Making Single Sale as.** An individual making a single sale of a vehicle, boat or airplane is not liable for use tax as a consumer provided he makes no use of the property before selling it. This is because under Section 6275 a person making a single sale of this class of property is a retailer

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resulting in his purchaser incurring liability for use tax. Thus the seller is properly considered to have bought the item for resale and his resale does not constitute a use taxable to him. 3/11/66.

585.0190 **Sale of Aircraft By A Seller of Vehicles.** A sale of an aircraft by a person holding a seller's permit for the sale of vehicles is not subject to sales tax unless that person also sold aircraft in sufficient manner to require the holding of a seller's permit solely due to the aircraft sales. Section 6283 exempts the one aircraft sale from sales tax unless the retailer is required to hold a seller's permit for aircraft sales even if the retailer is required to hold a seller's permit for sales of vehicles or vessels. 10/14/87.

585.0195 **Sale of Vessel by a Trust.** An 85 foot motor vessel is presently owned by a trust that was created pursuant to the last will and testament of a deceased person. The sole beneficiary of the family trust is the son of the deceased. The trustee of the family trust is planning to sell the motor vessel to the natural mother of the son (who was the ex-wife of the deceased).

Section 6005 provides that a trust is a person and the current owner of the vessel is the family trust. This means that the person selling the vessel would not be the son, the beneficiary to the trust; rather, the seller would be the trust itself. Since the trust is a person under section 6285(a), the transaction cannot be exempt from tax under section 6285(a).

Since the trust is not a dealer of vessels, the sale of a vessel by a person other than a dealer of vessels is not subject to sales tax. However, the purchaser of a vessel from a person such as this family trust must pay use tax measured by the sales price of the vessel to the purchaser, unless the transaction is otherwise exempt from tax. 2/6/96.

585.0197 **Seller of Vessels.** The business of a taxpayer who initially registered with the Board as a welder and repairer of vessels evolved into that of a builder and seller of vessels. The taxpayer is required to hold a seller's permit by virtue of the number, scope, and character of its sales of vessels. As such, its sales of vessels are not exempt from sales tax under section 6283. The purchaser's payment of use tax to the DMV upon registration of the vessel (which would generally occur only because the taxpayer failed to properly report the sale to the DMV and to the Board) is not a defense to the taxpayer's liability for reporting and paying sales tax on its sales of vessels. 1/29/97. (Am. M98–3).

585.0198 **"Sham Transaction"—Transfer of Vessel Outside State.** A taxpayer purchased a documented vessel which was physically located in Long Beach, California. The bill of sale provided that title to the vessel would transfer to the purchaser upon delivery ''outside the territorial waters of the state.'' Immediately after delivery of the vessel to the taxpayer in international waters, the taxpayer sold the vessel to his father ''outside the territorial waters of the state.'' The vessel immediately re-entered ''the territorial waters of the state.'' The son claims that no sales or use tax applies to his purchase of the vessel because the sale occurred outside the state and the vessel was not purchased for his use in California. Also,

section 6285(a) states that the transfer of a vessel between enumerated family members is exempt from sales and use taxes in certain situations.

In this situation, a determination should be issued to both the son (seller) and the father (purchaser) since, at this point in time, there are insufficient facts to decide with certainty whether the son or the father is responsible for the use tax. The basis for a determination against both parties is that the transaction appears to be a ''sham'' and the mid-ocean purchase and sale was clearly intended to defeat the imposition of the applicable tax.

If there is evidence that the taxpayer has been paying property taxes, slip rental or upkeep on the vessel, he will be liable for the tax on the basis that the father, as registered owner, is merely a ''straw man.'' On the other hand, if the father is really the owner because he continues to pay taxes, slip rental or upkeep, the Board should assess tax against the father on the basis that the son was merely a ''straw man'' or an agent to facilitate the father's purchase of the vessel. 7/21/95.

585.0199 **Statute of Limitation—Unregistered Co-owner of Vehicle.** Two parties, A and B, entered into an agreement to invest in a classic vehicle for $28,000 with the intention of maintaining it, selling it in the future, and sharing the profit. Only one of the purchasers, B, registered the vehicle with the Department of Motor Vehicles (DMV). B falsely reported a purchase price of $2,000 to the DMV and paid use tax on the reported $2,000 purchase price. Since the three-year statute of limitations had already expired since the use tax was paid DMV, the question arises whether the Board can issue a Notice of Determination against the unregistered co-owner, A, based on the eight-year statute of limitations applying with respect to A.

Based on the agreement, both A and B were engaged in a joint venture for which there was a business purpose. The Board has previously taken the position that in circumstances where a taxpayer may be operating as a joint venture unbeknownst to the Board, the newly discovered joint venture would get the benefit of the joint venture having filed returns, even if the Board is unaware that a taxpayer may be operating as a joint venture. These principles were based on the rationale that the newly discovered joint venture would take the detriments and benefits flowing from his or her joint venture status. These principles would apply whether the return was filed in the name of the joint venture or a sole proprietor.

Based on these principles, A would get the benefit of B's filing of the registration, i.e., the return. The three-year statute of limitations has expired with respect to A, as with B. Thus, A cannot be held liable for the use tax measured by the $28,000 purchase price. In other words, absent the Board's finding of fraud in the underreporting of tax, the Board is barred by the statute of limitations from issuing the Notice of Determination against A. 1/29/97.

585.0200 **Stolen Vehicle.** Refund of use tax paid by a purchaser on a private sale of a stolen car, which was later confiscated by the police, was authorized because the seller had no title to the car which he could legally transfer to the buyer. 2/3/70.

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585.0220 **Title Transfer-Vehicles.** The key to the proper tax rate in all vehicle transactions is the date of purchase. Possession and title usually pass together and the date of possession is ordinarily controlling. However, if the purchaser can show that he received title before possession, the date on which the purchaser received title is controlling. 8/4/67.

585.0240 **Trailers—Sales for Resale.** A seller of boats and trailers, who has a valid seller's permit, may purchase the trailers ex-tax for resale, even though the trailers are vehicles of a type subject to registration and the seller is not a dealer licensed by the Department of Motor Vehicles. 11/3/65.

585.0260 **Transfer to Contest Winner.** There is no tax due on the transfer of an automobile to a contest winner when sales tax has been paid on the prior transfer of the automobile to the promoter of the contest. The transfer to the contest winner is not a taxable sale because the automobile is acquired by chance or skill, and there is no use tax liability because the automobile is received as a gift or premium rather than a purchase. 8/1/67.

585.0270 **Transfer to Living Trust.** An owner of a vessel registered with the Department of Motor Vehicles, who wishes to transfer the vessel into a revocable family trust in which he is both the trustor and the trustee, is liable for use tax measured by the sales price of the vessel.

A trust is a ''person'' as defined by Revenue and Taxation Code Section 6005. As such, the purchase of a vessel by a trust from a non-dealer is subject to use tax measured by the sales price of the property. If there is no measurable sales price, the use tax would not be due.

Where a bank is the secured lienholder and there is an outstanding loan on the vessel payable to the bank, and the owner transfers the vessel to the trust and continues to make the payments on the loan from his own funds, use tax would not apply to the transaction, because the transfer to the trust would be for no consideration. On the other hand, if the owner in addition to transferring the vessel to the trust, also transferred his checking account to the trust, and the payments on the outstanding loan were made from trust funds, use tax would be due to the extent of the amount paid by the trust for the vessel. 5/30/91.

585.0275 **Transfer to Revocable Grantor Trust.** An individual intends to transfer the ownership of an aircraft to a revocable grantor trust of which that individual is both the grantor and trustee.

If a donation of the aircraft to the trust is for no consideration, the transaction would not be subject to use tax. However, if the trust provides a consideration in exchange for the aircraft (e.g. assumption of liability for an outstanding loan) the use tax would apply measured by the consideration paid by the trust. 3/25/92.

585.0278 **Transfer of Stock for Interest in Aircraft.** A taxpayer owns 50% of the outstanding stock of a Subchapter S Corporation. The Corporation's sole asset is a Cessna aircraft. The Corporation is not in the business of selling aircraft. The taxpayer wishes to exchange his 50% stock ownership in the Corporation for a 50% direct interest in the aircraft. The aircraft would be registered showing the

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taxpayer as co-owner of the aircraft along with the Corporation. The reason the taxpayer desires the transfer is to facilitate the subsequent sale of his 50% interest in the aircraft to a third party, who has no interest in investing in the Corporation. The taxpayer will use the aircraft prior to selling his 50% interest to the third party.

There is a sale of the 50% interest in the aircraft to the taxpayer by the Corporation. Fifty percent stock ownership in the Corporation is something of value at the time of the transfer and constitutes consideration. The taxable sales price is the value of that consideration and any other form of consideration (e.g., assumption of liabilities). Since the Corporation's sole asset is the aircraft, the value of the shares transferred would be equivalent to 50% of the value of the aircraft. Thus, use tax would be measured by 50% of the value of the aircraft.

The taxpayer's subsequent sale of the 50% interest in the aircraft to a third party will be subject to use tax, measured by the sales price. 10/21/96.

585.0280 **Transfer to Subsidiary from Parent Corporation.** Transfer of a used vehicle by an out-of-state parent corporation to its California subsidiary for a consideration was subject to use tax because the transfer was a sale between two separate and distinct entities and the vehicle was transferred for use in California. 5/25/70.

585.0283 **Transfer of Vehicle to Co-Signer.** The transfer of title to a motor vehicle for a consideration from the registered owner to a person who was co-signer of the note for the purchase of the car is a retail sale by a retailer pursuant to section 6275. A co-signer is not a co-owner unless so designated on the ownership documents, and the transferee must pay use tax upon registering the car (unless the sale is nontaxable as in an intra-family transfer pursuant to section 6285). The measure of tax is the amount of the assumed liability plus the amounts, if any, that the co-signer agrees to pay the owner for the owner's equity in the vehicle.

There are circumstances, however, under which the payment of the loan by the guarantor will not result in assessment of tax even if that guarantor obtains the vehicle. When the purchaser defaults on the loan and the bank demands payments be made by the co-signer, the bank generally arranges to transfer title to the vehicle to the guarantor/co-signer who makes payments. In this situation, there is no sale since the bank is the one effecting the transfer of title under its power to collect payments from co-signer under the loan agreement and co-signer has not paid any consideration to the bank that the bank was not already entitled to from co-signer. 9/16/75; 10/10/97. (Am. M98–3).

585.0290 **Truck Tractor, Use of.** So long as the transaction otherwise qualifies, the exemption provided for in Section 6388 is not lost by the purchaser carrying a load in the new vehicle during the course of its journey outside the state. 9/30/71.

585.0317 **Used Vehicles Modified for Handicapped.** The sale of a used vehicle which has been previously modified for a physically handicapped person, to another handicapped person continues to enjoy the partial exemption provided by

VEHICLES, VESSELS, ETC. (Contd.)

section 6369.4. The person registering the vehicle with the Department of Motor Vehicles has the responsibility of proving the value of the exempt portion of the vehicle, since section 6369.4 exempts only the modified portion. 9/5/85.

585.0320 **Use Outside State of Vehicle Purchased in California.** Sales tax reimbursement paid at the time of purchase of an automobile should be refunded to a buyer who takes delivery of, and uses the vehicle outside of California for five months before returning to the state, even though the buyer pays the California vehicle registration fee at the time of the sale in California. The automobile, having been used outside the state for longer than the 90-day period specified in Section 6248, is presumed not to be purchased for use in California. 4/3/69.

585.0330 **Use Tax Paid to Yacht Broker.** Use tax was charged and collected by a yacht broker (holder of a seller's permit) on a sale of a yacht (documented vessel) in which the yacht broker was a true broker and not a retailer of the yacht. The individual who owned the yacht and actually made the sale did not hold a permit for the sale of vessels.

In such a case, the purchaser is required to report and pay the use tax measured by the sales price directly to the Board. However, when money is collected by a broker (a retailer from a purchaser) under representation that it is payment of tax, that money constitutes a debt owed to the state by the broker. Hence, the Board could seek payment from the yacht broker for the money he collected from the purchaser. If any such amounts were collected from the broker, they would be applied to the purchaser's liability for use tax (section 6204). 12/4/95.

(Note subsequent statutory change effective 1/1/96. See sections 6202 and 6283)

585.0350 **Vessel Skippered by Owner.** When it is a condition to leasing a 35-foot sailboat that the owner (lessor) ''skippers'' the boat, the boat owner is providing transportation services to the customers. The chief characteristic of a renting or leasing is the giving up of possession to the hirer, so the hirer and not the owner uses and controls the rented property (*Entremont* v. *Whitesell,* 13 Cal.App.2d 290 citing Civil. 1925, 1955). When possession, custody, and license to use equipment remains totally in the hands of the owner or his employees, such a transaction is not a lease for sales and use tax purposes.

Therefore, the taxpayer does not have the option to report and pay use tax on lease receipts. Use tax is due on the total purchase price of the sailboat. 1/29/88.

585.0394 **Substantially Same Ownership.** Some divisions of Company A are engaged in selling activities requiring the holding of a seller's permit. The transfer of all the assets, including all the vehicles, of a nonselling division of Company A to an existing corporation wholly owned by Company A does not qualify for the section 6281 exemption. Section 6281 requires that substantially all the assets held or used in the course of ''business activities'' be transferred in their entirety (substantially all of Company A assets, not just the assets of one division). 9/14/84.

VEHICLES, VESSELS, ETC. (Contd.)

585.0406 **Vehicle Purchased from Father's Estate.** The fact that a person is the daughter of the deceased does not affect the application of the tax to the purchase of the vehicle since the purchase is being made from the estate and not from her father. The estate is a ''person'' as defined under section 6005, but not a family member listed in Revenue and Taxation Code section 6285. The purchase is, therefore, subject to use tax. 6/14/72.

585.0460 **Fleet Purchases—Companies as Agents for Employees.** Vehicles purchased by companies under their fleet purchasing power are not subject to use tax when the registration is transferred from the company name to theemployee name if sales tax was paid by the dealer making the sale. Here, the employee actually pays for the vehicle, makes all financing arrangements, and takes delivery directly from the dealer. The company, in such cases, is acting as an agent for the employee when it makes the purchase on the employee's behalf. 11/23/64.

585.0480 **Historical Value Vehicles.** Vehicles of ''historical value,'' those which were manufactured prior to 1922 and for which special ''horseless carriage'' license plates have been issued are subject to use tax at the time of registration if it is purchased from other than a dealer, manufacturer, or dismantler just as any other vehicle that is required to be registered under the Vehicle Code. 12/20/63; 1/21/72.

585.0500 **Insurance Company Sale of Salvage Auto.** The sale at retail of salvage automobiles to nondealers is not subject to sales tax but will be subject to use tax upon registration of the vehicle by the owner. If the purchaser has no intention of registering the vehicle, tax should be collected by the seller. 1/28/64.

585.8000 **Vessel Delivered Outside of California.** A California retailer of vessels enters into a contract with a California resident for the sale of a customized vessel and delivery at an ''offshore delivery point.'' Provisions of the contract of sale require several partial payment deposits with the final payment due and payable after Buyer's final inspection and acceptance of the vessel at the ''offshore delivery point.'' Seller's right to retain the deposits are contingent upon Buyer's acceptance of the vessel after final inspection. The risk of loss remains with the Seller up to the ''final inspection and delivery'' to Buyer. Possession and control is to remain with Seller prior to delivery of the vessel to Buyer. No title clauses are expressed in the contract. Under Uniform Commercial Code section 2401 and Regulation 1628(b)(3)(D), absent a contractual provision that title passes prior to delivery, title passage occurs at the time seller completes its duties with respect to physical delivery of the property. Under these circumstances, the sale of the vessel occurs outside California and, thus, is not subject to sales tax.

As long as the vessel is delivered outside of California, is first functionally used outside of California, and is functionally used in excess of 90 days outside of California, prior to any entry into California, the Buyer's subsequent California use, if any, will not be subject to California's use tax. If the vessel is delivered outside of California and enters California waters within 90 days after purchase, the Buyer will be subject to use tax unless the vessel is used or stored

outside of California one-half or more of the time during the six months after the vessel entered California waters. 7/9/97.

590.0000 VENDING MACHINE OPERATORS—Regulation 1574

On federal areas, see Federal Areas. Vending machine business, sale of, see also Occasional Sales—Sale of a Business—Business Reorganization.

590.0010 **Air and Water Through Vending Machines.** A taxpayer is engaged in operating self-service gas stations. Taxpayer has on the premises coin operated vending machines attached to an air compressor and water line. The air and water are not purified or filtered in any way nor are there storage tanks to hold water or air. The machines will dispense either air or water for approximately three and one-half minutes on the insertion of 25¢.

The sale of the air and water through the coin operated vending machine is nontaxable. The sale of the water is within the exemption provided by Section 6353. The sale of the air, in this factual situation, is incidental to the furnishing of the services of the air compressor (see Anno. 275.0020). 8/10/87.

590.0023 **City Selling Photocopies at Library.** The general rule is that sales tax applies to retail sales in this state of photocopies, whether over the counter, or through coin or card-operated copy machines. However, a municipal library or any vendor making sales pursuant to a contract with a municipal library is a consumer of photocopies sold at retail through a coin or card-operated copy machine located at a library facility. (Section 6359.45) In other words, sales tax would not apply to such sales of photocopies through a coin or card-operated copy machine located at the library facility. Rather, sales or use tax applies to the sale to, or to the use by, the municipal library of the equipment, paper, ink, or other tangible personal property the library uses to provide the photocopying service. Sales tax applies to over-the-counter retail sales of photocopying (not coin or card-operated). 8/9/96.

590.0030 **Copies Sold By Libraries.** Regulation 1574(b)(1)(A) declares, that library districts, municipal libraries, county libraries, or any vendor making sales pursuant to a contract with one of these entities is the consumer, rather than the retailer, of copies sold through coin or card operated copy machines located at the library facility. Libraries of state universities, state colleges, or community colleges do not fall within this provision. 12/18/90.

590.0033 **Copies Sold By School Libraries.** California State University and Community College libraries are not ‘‘library districts, county or municipal libraries’’ for purposes of Regulation 1574(b)(1)(A). Private college libraries are also not within the scope of the above Regulation since these are privately established and administered. They are not established pursuant to the guidelines in the Education Code for the formation of a ‘‘library district’’ or a ‘‘municipal county library.’’ 2/24/86.

VENDING MACHINE OPERATORS (Contd.)

590.0038 **Copy-Card Sales.** In general, tax applies to sales of photocopies through coin or card operated machines. Although the sale of a copy-card is not a sale of tangible personal property, the sale of the card is an advance collection for the sale of copies. Sales tax reimbursement may be collected at the time the copy-card is sold. 6/24/94.

590.0042 **Dispensing Tickets with Numbers.** A taxpayer operates a vending machine which dispenses tickets having six randomly selected numbers. The customers can use the numbers to play the State's lottery game. The sales of the tickets are subject to tax because the tickets are tangible personal property and the operator of this vending machine is governed by Regulation 1574. 1/15/87.

590.0048 **Fixed Price Contract.** A contract between a vending machine operator and its customer provides that the operator must establish a price to be charged with the consent of its customer and that any increase in price is subject to mutual agreement of the parties. Despite the fact that the contract does not specifically state the mutually agreed upon prices, it is a fixed price contract.

The contract also provides that the operator ceases to be obligated to the fixed price whenever the price of any item dispensed is increased after a specific date. Accordingly, upon the occurrence of this event, the customer is no longer obligated under a fixed price contract and the increased tax rate is applicable. 3/30/84.

590.0055 **Gum Machine Contracts.** Gum and candy products are distributed through self-service gum machines through agreements with individual nonprofit civic clubs who find locations for the self-service gum and candy machines and receive commissions from sales through such machines for use in their community betterment projects. Each vending machine bears a prominent sign which indicates the name of the sponsoring civic club. These self-service vending machines are owned and operated by a "local distributor," i.e., an independent contractor.

Because of the manner in which this program is conducted and the representations made on the vending machines signs, the general public apparently considers the various sponsoring nonprofit organization to be the actual seller of the gum and candy products sold through the vending machines. Pursuant to section 6359.45, the nonprofit club's sponsors are to be considered the consumers of the gum and candy sold for 15 cents or less through a vending machine pursuant to this program. Further, the purchase of the gum and candy products which are actually sold under this program by the sponsoring civic club are not subject to tax since these items qualify as exempt food products for human consumption. 4/13/84.

590.0070 **Hot Beverages or Hot Bakery Goods.** Sales tax applies to the gross receipts from the sale of hot beverages or hot bakery goods sold through a vending machine for more than $.15 if sold for consumption at facilities provided by the retailer or by a person with whom the retailer contracts to sell food products to others. 2/26/73.

VENDING MACHINE OPERATORS (Contd.)

590.0090 **Merchandise Sold From An Unattended Box.** Sales made from an un-attended box where the purchaser deposits coins into the box and selects merchandise from the box are not sales through a vending machine. A vending machine is a ''machine'' that dispenses small goods upon the deposit of a coin or coins in a slot. That is, a vending machine responds to the insertion of money by dispensing (i.e. physically releasing) the foods sold through the machine. The box in question is not a vending machine. 3/17/92.

590.0096 **Nonprofit Organization.** Section 6359.45 categorizes the following as consumers of tangible personal property sold through vending machines for 15 cents or less:

(1) All nonprofit organizations, regardless of purpose;

(2) All charitable organizations; and

(3) All educational organizations, whether for profit or nonprofit. 9/1/83.

590.0140 **Operator as Retailer or Employee.** Where a vending machine operator enters into an agreement with a school to furnish and sell all food necessary during the school day to students; is paid on a profit sharing basis; assumes risk of loss; is engaged in a distinct occupation as an organization separate from the school; and maintains insurance covering its operations; it is an independent contractor-retailer and not an employee of the school. Accordingly, the sales of food to students from the vending machines are subject to sales tax. 6/21/67.

590.0148 **Photocopying Machine Copy Cards.** Some copy machines available for the use of the public may be activated by the insertion of coins or by insertion of a pre-purchased ''plastic copy card''. Cards may be purchased in various denominations, good for a specified number of copies. Each use of the card reduces the remaining number of copies for which it can be used. The machine returns the card to the customer after each use, including the final use. The customer may then dispose of the card.

The taxpayer is the retailer of the copies and the consumer of the plastic copy cards, which are merely indicia of the pre-paid intangible right to purchase photo copies. 12/18/90.

590.0150 **Posted Tax—Included Statements—Vending Machines.** Tax reimbursement is presumed included on only taxable sales. Exempt sales, though for the same price, do not include tax reimbursement. Thus taxable and exempt items sold from a vending machine for the same price are deemed to be tax included with respect to taxable items and no excess tax reimbursement on exempt sales results from the fact that all items are sold for the same price. 9/9/93.

590.0350 **Sales of Meals and Food Products Through Vending Machines to Students.** Tax does not apply to retail sales of food products or meals, whether served hot or cold, through a vending machine or otherwise by a public or private school to its students. However, this exemption does not apply to such sales of food products and meals to nonstudents.

VENDING MACHINE OPERATORS (Contd.)

In those situations where sales of food products and meals are made through the school owned vending machines to both students and nonstudents, a reasonable allocation between exempt and nonexempt sales can be made. In such cases, the school can establish a representative test of the vending machine sales occurring on the affected campuses. However, before implementation of such a test, it is recommended that the school submit the proposed testing procedure to the appropriate Board headquarters' section for review so that it can determine its adequacy and advise the Board's district office serving the affected school's campuses. 10/19/83.

590.0370 **School Partnership.** An agreement between a school/school district and a vending machine operator whereby the vendor receives 80% of the proceeds of the machines, services the machines, and reserves the right to remove the machines from the premises upon 30 days written notice does not create a partnership between the operator and the school. The 20% of the proceeds paid to the school is in the nature of payment for space and utilities, i.e., rent calculated on a percentage basis. Accordingly, the proceeds from the sale of fruit drinks through the machine are not exempt as sales of food products by a school to its students. 9/19/91.

590.0450 **Subsidies.** A vending machine operator enters into an agreement with its customers to sell goods through its vending machines on the customer's premises at a reduced price. The customer in turn pays a ''subsidy'' to the vending machine operator. The ''subsidies'' are based on the number and type of items sold (e.g., $.35 for each carton of milk sold). Under these circumstances, the subsidies can be traced to particular sales and are includable in gross receipts. 10/16/85.

590.0800 **Vending Machines.** A vending machine is filled with small toys which requires the skill of the player in operating a claw before a toy is dispensed. If an appreciable skill is required, and the primary purpose of the machine is to provide entertainment by challenging a player to display the skill of operating the jaw, no tax would apply to the charge for that entertainment. The vending machine operator would be the consumer of the product dispensed.

In general, if a vending machine dispenses tangible personal property to nearly everyone, then the primary purpose of the machine is to sell tangible personal property and the tax application on the sales from this vending machine is governed by Regulation 1574. If there is no assurance that a player will ever receive any tangible personal property, i.e., that receiving any tangible personal property is dependent upon the players skills or knowledge, then receipts from these types of vending machines are not subject to tax. 6/18/93.

590.0810 **Vending Machine Sales.** Effective January 1, 1990, section 6359.2(c) of the Sales and Use Tax Code establishes statewide uniformity in accounting for sales of cold food products sold through vending machines. Pursuant to this section, 33 percent of the gross receipts from the sale of cold food products sold through vending machines is subject to the sales tax, whether or not eating

facilities are provided. The law provides uniformity in taxing gross receipts from the sale of food products sold through vending machines and simplifies tax auditing procedures. 07/13/01.

VENTURES
Joint, see Occasional Sales—Sale of a Business—Business Reorganization.

VESSELS
See Sales to Common Carriers; Vehicles, Vessels, and Aircraft; Watercraft.

VETERINARIANS
See Permits; Prescription Medicines. Copy Pages K431 to K435 (MM).

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595.0000 "WAR MATERIEL" CONTRACTORS—Regulation 1618
See United State Contractors.

596.0000 WASTE BYPRODUCTS

596.0100 **Almond Shells or Almond Tree Prunings** used in an industrial facility as a fuel source in lieu of the use of either oil, natural gas, or coal are "waste byproducts" from agricultural or forest products operations, the sale or use of which is exempt from tax pursuant to Section 6358.1(b). 2/24/83.

596.0120 **Blended Fuel Products.** Blended fuel oil products which are not pitch but consists of 55% pitch and 45% cutter oil are equivalent in value to bunker fuel and as such would not qualify as a waste by-product within the meaning of 6358.1 or the court's ruling in *Union Oil Company* v. *State Board of Equalization,* 224 Cal.App.3d 665. Blended fuel oil products exchanged for steam are not exempt under the provisions of 6358.1 and the case cited. 6/25/91.

596.0125 **Blended Recycled Drain Oil.** A company is engaged in a project to blend recycled drain oil and virgin fuel oil. This blended oil would then be used as an alternative fuel source by industrial facilities. The sale of the blended product will qualify for the section 6358.1 exemption if the product contains 90 percent or more recycled drain oil. 8/6/97. (M98–3).

596.0140 **Butane and Propane.** Butane and propane are commercial grade products of a type ordinarily produced in the oil refining process and are commercially marketable. Therefore, they cannot be classified as waste by-products. In addition, the butane and propane produced does not qualify as "still gas" as defined in Section 6358.1(b). 5/6/93.

596.0200 **Coke Fines Produced in the Fluid Coking Processing.** An oil refiner purchases crude oil which is refined into various petroleum products by means of the fluid coking (including flexicoking) process. Fluid coke is produced as a byproduct. The fluid coke (including flexicoke) is not extracted from the unit but is burned as part of the fluid coking (or flexicoking) process. Such use of fluid coke fines is exempt from tax as the use of a "waste byproduct" pursuant to Section 6358.1(b). 9/24/86.

596.0300 **Drain Oil.** Oil previously used as a lubricant in vehicles or other machinery is acquired from service stations, railroads, and public utility companies, and is then sold as recycled drain oil to purchasers who will use it in an industrial facility as a fuel source in lieu of oil, natural gas, or coal. Such recycled drain oil is a "waste byproduct", the sale or use of which is exempt from tax pursuant to Section 6358.1(b). 8/20/85.

596.0335 **Firewood Used to Cook Pizzas.** Firewood used to cook pizzas does not qualify for the exemption provided by section 6358.1(a)(2) for waste by-products. While it may be possible for firewood to be a waste by-product of

forest operations, the restaurant is not an ''industrial facility'' as required by the statute for the exemption to apply. 1/20/95.

596.0400 **Mesquite charcoal.** Mesquite growing wild which is cut to be used as charcoal for cooking is not grown expressly for fuel purposes nor is it a waste byproduct from agricultural or forest products operations which is used as fuel in an industrial facility. Therefore, the sale or use of mesquite charcoal is not exempted by Section 6358.1(a) or (b). 8/15/84.

596.0600 **Petroleum Coke.** Petroleum coke produced from a ''fluid'' coker and sold for use as fuel in alternative energy facilities constitutes a waste byproduct, the sale or use of which is exempt from tax pursuant to Section 6358.1. Petroleum Coke is what remains from a barrel of crude after all the light ends have been removed. Its composition is similar to sand. 6/25/91.

596.0650 Seedlings. Sales of eucalyptus seedlings to persons who will grow them expressly for fuel purposes are exempt from sales tax under section 6358.1 provided an exemption certificate under Regulation 1667 is taken by the seller in good faith and timely. The exemption would not apply if a purchase buys seedlings, plants them in a manner so as to control soil erosion, then harvest the trees for fuel. 3/8/84.

596.0700 **Tires.** Scrapped tires or scrapped shredded tires are ''waste byproducts'' for purposes of Section 6358.1. Therefore, the sale or use of scrapped tires or scrapped shredded tires used in an industrial facility as a fuel source in lieu of the use of either oil, natural gas, or coal is exempt from sales or use tax. 1/31/84.

596.0765 **Wood Chips Obtained from Burnt Forest.** A taxpayer contracts as an independent contractor with land owners for salvage operations on timberland. These salvage operations occur after the land has been subject to a controlled burn, or where a forest fire is caused by natural means, accident, or arson. The taxpayer chips out stumps and other materials not consumed in the burn. The taxpayer then sells the chips.

There is no material difference between the case when the wood chips are harvested following a planned burn versus an unplanned burn. Clearing of undergrowth to prevent fires and thinning of new growth or promotion of growth are ''forest products operations.'' Management of the forest includes both the conducting of planned burns and the conducting of operations in response to fires caused by natural means, accident, or arson. Thus, the wood chips are a waste byproduct with respect to the forest products operations conducted by the owners of the land. It is irrelevant under section 6358.1 that the retailer of these chips is an independent contractor of the land owner rather than the land owner itself. The taxpayer's sales of wood chips to be used as a fuel source in lieu of oil, natural gas, and coal are exempt from tax under section 6358.1. 10/31/96.

596.0780 **Wood Chips From Small Trees.** In forest thinning projects, smaller trees must be taken out to make room for the healthiest trees to grow to maximum size in a minimum amount of time. The sale of wood chips produced from the

WASTE BYPRODUCTS (Contd.)

small trees and branches from forest thinning is an exempt sale of waste byproducts from forest products operations for the purposes of section 6358.1. 2/10/94.

596.0800 **Woodex** is a mixture of rice hulls and sawdust mixed with a binder and pressed into pellets. Use of Woodex for burning in lieu of fuel oil in greenhouse boilers to produce heat to maintain an appropriate temperature for growing plants to be sold is exempt from tax as the Woodex is a ''waste byproduct'' within Section 6358.1(b). 3/30/81.

WATCH REPAIRMEN
See Miscellaneous Repair Operations.

WATER
See Gas, Electricity and Water.

600.0000 WATERCRAFT—Regulation 1594
See Vehicles, Vessels, and Aircraft.

(a) IN GENERAL

600.0008 **Barge.** Generally, a clamshell barge cannot qualify for the watercraft exemption because it is not used for the transportation of property or persons for hire. 5/13/68.

600.0012 **Barge Used As Ferry Dock.** A barge, approximately 112′ by 52′ in size which will be used as a ferry dock and a passenger loading platform for ferry boat services, does not qualify for the watercraft exemption since it will be used principally in intrastate commerce. 3/20/90.

600.0016 **Cargo Spreaders.** Cargo spreaders which are a component and integral part of the cargo handling equipment permanently affixed to a ship are component parts of the ship for purposes of the watercraft exemption. If the spreaders are instead attached to and used in conjunction with shoreside cargo handling equipment they are not component parts of the ship. 4/4/77.

600.0017 **Floating Dry Dock.** Although section 6356 contains an unqualified exemption from sales tax for vessels of more than 1,000 tons sold in this state by the builder, it does not contain a comparable exemption from use tax. A floating dry dock built in Japan and delivered to the buyer in San Diego is tangible personal property which qualifies as a vessel, and its use in California is subject to use tax. 7/18/84.

600.0020 **"For Hire" Operations.** The Attorney General, in Opinion 49/206, January 10, 1950, held that watercraft used by the owner for transporting his own property is not carrying ''property or persons for hire'' within the meaning of Section 6368 of the Revenue and Taxation Code. In the same opinion, the Attorney General, concerning the extent to which a watercraft may be used to transport property belonging to the owner in addition to its ''for hire'' operations and still be a watercraft ''for hire'' within the meaning of the statute, observes:

WATERCRAFT (Contd.)

The provision that watercraft must be used for hire in order to qualify for exemption would be rendered meaningless if the mere possibility of its being used for hire, or an insignificant use for hire were sufficient to qualify it for the exemption. However, the question whether a particular vessel qualifies for the exemption would require a factual determination. The standards to be applied in this determination would seem to be an appropriate matter for administrative regulation by the State Board of Equalization. 1/10/50.

600.0040 **Freight Containers.** The watercraft exemption in Section 6368 is not applicable to the sale of freight containers, which are designed for land movement as well as for storage in vessels for movement at sea. 11/26/58.

600.0047 **Inflatable Life Rafts.** For purposes of the watercraft exemption, inflatable life rafts are watercraft and the survival kits sealed therein are component parts of the watercraft. 6/21/67.

600.0055 **Marine Cargo Containers—Repairing.** Marine cargo containers do not constitute watercraft within the meaning of section 6368 and 6368.1. Therefore, the application of the sales or use tax to the repair of the marine cargo containers in California is governed by Regulation 1546, Installing, Repairing, Reconditioning in General. 3/28/90.

600.0060 **Resale Before Exempt Use.** When the first purchaser of a vessel for use in foreign commerce for hire subsequently finds that circumstances prevent him from placing the vessel in use as planned and, accordingly, sells the vessel to another purchaser who places the vessel in use in foreign commerce for hire, the sales tax does not apply to either side. The exemption is framed in terms of intent; the intent of the purchaser at the time of purchase governs where the intent is definitely established. 7/31/57.

600.0063 **Transfer of Vessel to Obtain Dungeness Crab Permit.** In a transaction between private parties, a vessel was sold for the purpose of obtaining the Dungeness crab vessel permit and transferring it to a vessel owned by the purchaser. The vessel itself was in a scrap yard and considered as having no value. The purchaser paid $12,000.00 for the vessel and the associated permit.

According to Fish & Game Code section 8280.3(a)(1), the Dungeness crab permit owner must be the record owner of *both* vessels in order to transfer the permit from one vessel to another. The purchaser bought the vessel for its own sake. He/she had to own the vessel, and the title to it, in order to transfer the crab permit to another vessel owned by him/her. Although the purchaser's interest was in obtaining the permit itself, he/she in fact obtained title to the vessel for $12,000.00. The purchase of the vessel is subject to tax. 10/23/00. (2001–2).

WATERCRAFT (Contd.)

(b) USE IN INTERSTATE OR FOREIGN COMMERCE

600.0070 **Component Parts of Vessel.** Sales tax does not apply to purchases of parts that will become a component part of a vessel engaged as a passenger cruise line in the Far East. Although the vessel does not make a port of call in the United States, the vessel is engaged in foreign commerce for purposes of the exemption provided for in section 6368. 7/28/83.

600.0080 **High Seas.** The fact that vessels travel in part on the high seas in the course of their journeys to and from California ports, does not exempt them under Section 6368 from California use tax as being used in interstate or foreign commerce. 2/16/54.

600.0100 **Kelp.** Since watercraft used in harvesting kelp is not engaged in interstate and foreign commerce involving the transportation of persons or property for hire or used in commercial deep sea fishing operations, the sale of repair parts and other items used in the operation of such watercraft is subject to tax. 8/31/50. (Am. 2000–1).

WATERCRAFT (Contd.)

600.0102 **Lease to Clean Up Oil Spills.** Spilt oil is not cargo when it covers the water after being leaked by a platform or when it is leaked by a tanker. Accordingly, a vessel leased to clean up oil spills is not importing cargo (oil) obtained from such oil spills and is not used in interstate or foreign commerce. 5/23/92.

600.0105 **Lifting of Vessels.** A derrick barge lifts vessels that are principally used in interstate and foreign commerce in and out of dry dock. This lifting of vessels by the derrick barge is not a use which would qualify the derrick barge to an exemption under Regulation 1594(a)(1). Therefore, tax applies to the sales price of the barge and the materials to renovate or maintain it. 2/17/93.

600.0115 **Route Partially in Another State.** The watercraft exemption for watercraft used in interstate or foreign commerce applies even though all transportation begins and ends in California if a portion of the route is in the waters of another state. 4/9/87.

600.0120 **Tugboat and Barge Operations.**

1. Water-taxi used in transportation of pilots, longshoremen and ship crews from a point on shore to a vessel engaged in interstate or foreign commerce while operating on navigable water or vice versa.

Watercraft used for these purposes are not used in interstate or foreign commerce and are not, therefore, within the exempt category except in the case of watercraft transporting so-called harbor pilots to or from vessels, these pilots actually navigating or aiding in the navigation of the vessels in the completion or commencement of their voyages from or to a point outside this state.

2. Tugboats engaged in towing or assisting vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use, if in aid of the actual movement of vessels carrying cargo or passengers, qualifies the tugboats for the exemption.

3. Tugboats and barges engaged in the delivery of bunker fuel to vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use does not qualify the tugboats and barges for the exemption. The delivery of bunker fuel from a point in this state to vessels in this state is not a use in interstate or foreign commerce even if the vessels are engaged in interstate or foreign commerce.

4. Tugboats and barges engaged in transporting cargoes moving in interstate or foreign commerce.

This use qualifies the tugboats and barges for the exemption.

5. Tugboats and barges engaged in the delivery of ships' stores to vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use does not qualify the tugboats and barges for the exemption. As in the case of bunker fuel, the delivery of ships' stores from a point in this state to vessels in this state is not a use in interstate or foreign commerce.

WATERCRAFT (Contd.)

6. All lifting, handling, assisting, loading and unloading cargo or property to or from vessels in interstate or foreign commerce.

This is a use qualifying the watercraft for exemption to the extent that the property involved constitutes cargo.

If the property carried is other than cargo, e.g., fuel, ships' stores, etc., the transportation of such property is not a use in interstate or foreign commerce.

7. All testing of booms, davits, lifeboats or other services rendered to certificate or otherwise assist vessels in interstate or foreign commerce to conform to maritime regulations.

This is not an exempt use of the watercraft, as it does not involve transportation in interstate or foreign commerce.

8. All aid, assistance, or salvage of distressed, stranded or sunken vessels in interstate or foreign commerce or commercial deep sea fishing boats.

To the extent that watercraft are used in aiding a vessel to continue its movement to a point in this state from a point outside this state or vice versa, or the cargo of such vessel, the use is an exempt use in interstate or foreign commerce.

9. All services rendered to vessels in interstate or foreign commerce at dockside or in the stream, such as:

(1) Remove or replace and/or handle radar mast and antenna.
(2) Remove or replace and/or handle deck gear and equipment.
(3) Remove or replace and/or handle tail shafts, propellers and rudders.
(4) Remove, replace and/or handle any and all engine room equipment and machinery.

None of these services constitute a use in interstate or foreign commerce of watercraft transporting the workers or materials to or from the vessels.

The basic distinction running through all of the above answers is whether or not the use is in the transportation of either the vessel or its cargo or passengers in interstate or foreign commerce. The transportation of fuel, ships' stores, repair parts, and the like, to and from vessels is not a use in interstate or foreign commerce. We believe that these distinctions between what is considered a use in interstate and foreign commerce and a use other than in interstate or foreign commerce are in accordance with the law as determined by decisions of both Federal and State courts. 3/3/55.

600.0123 **Vessel Used to Catch Live Bait.** A vessel is used to catch live bait. The bait is used in the operation of a commercial passenger fishing vessel and is also sold to the general public. The use of the vessel constitutes a ''commercial'' use as provided in section 6368. The sale of the vessel will qualify for the watercraft exemption if it is used in a manner meeting all of the other requirements of the statute. 8/14/92.

600.0123.125 **Vessel Used to Clean Oil Spills.** A California taxpayer is purchasing a 48 foot vessel from an out-of-state retailer which is scheduled to be delivered to taxpayer in California. The vessel will be moored in a California port

WATERCRAFT (Contd.)

in stand-by condition ready for quick response to assist in oil spill cleanup. The taxpayer believes the vessel will be involved in interstate commerce because it will be used in aiding vessels delivering Alaskan crude oil into California. The vessel will be hired by subscription member companies for oil spill response.

Although a vessel that carries oil from Alaska to California is involved in interstate commerce when the spill occurs, the oil loses its character as property being transported for hire in interstate commerce when it is lost from the vessel at sea. The taxpayer is hired to clean up the oil spill, not for hire in interstate commerce. Thus, the taxpayer's use of the vessel does not satisfy the requirements for the watercraft exemption and is subject to use tax. 11/5/96.

600.0124 **Watercraft Used in Foreign Commerce.** A shipping line acquired a vessel from a foreign affiliate and refurbished it to comply with United States Coast Guard standards. After the vessel was refurbished, it was to be registered and documented under the United States flag and then be time chartered to the United States Navy. The vessel will operate in what is called the Combined Services Management Service. It will provide transportation and storage of general breakbulk cargo, vehicles, ammunition, etc., for the Department of Defense from the west coast of the United States to far east ports.

The purchase of the vessel and the parts becoming a component part of the vessel in the course of refurbishing the vessel qualifies for exemption under section 6368 as a watercraft for use in interstate and foreign commerce involving the transportation of property for hire.

Likewise, the time charter agreement is not subject to tax. It is a service contract, not a contract for the lease of the vessel. Even if this was a bare boat charter (a lease of tangible personal property), it would remain without tax consequence since the vessel constitutes mobile transportation equipment (section 6023) and a lease of mobile transportation equipment is not a sale. 6/8/88.

(c) COMMERCIAL DEEP SEA FISHING OPERATIONS
"Principal use" in, see (d) below.

600.0125 **Abalone Fishing in California Waters.** In order to claim the exemption provided in Section 6368, the principal use of commercial fishing vessels must be outside the territorial limits of the state. Abalone fishing by a commercial fisherman in the shallow waters within 3 miles of the shoreline of California and its off shore islands is not within the express meaning of Section 6368. 6/10/76.

600.0130 **Fees from Sport Fishing.** Fees from sport fishing are included within the meaning of gross receipts from commercial fishing operations in determining whether the presumption contained in section 6368(b) is applicable. 3/17/80.

600.0140 **Overhauling Before Use.** If the only storage and use of a vessel in California is for the purpose of overhauling it before use in commercial deep sea operations outside the territorial waters of the state, such storage or use is not subject to tax. The fact that the vessel is documented (''registered'' for foreign

WATERCRAFT (Contd.)

trade or ''enrolled'' for domestic commerce) is merely evidence that it may be used for their foreign or domestic traffic. 11/15/57.

600.0160. **Party Boats.** Since fishing party boat operators are engaged in commercial fishing operations when they take out fishing parties for hire, they are entitled to claim the exemption provided in Section 6368, if the boats are actually used for such purpose more than 50 percent of the time outside the territorial waters of the state. 10/26/59.

600.0180 **Sportfishing Boats.** Sales of sportfishing boats or tangible personal property becoming a component part of sportfishing boats for which a commercial fishing license is required are exempt from sales tax to the same extent as comparable sales involving commercial deep-sea fishing vessels. Similarly, the principal use of the sportfishing boat must occur outside the territorial waters of the state. 10/31/58.

600.0202 **Territorial Waters—Inland Lakes.** Section 6368 and Regulation 1594 were intended to apply only to commercial deep sea fishing in the ocean which, in the case of persons claiming this exemption, would generally be off the western coast of California. ''Territorial waters'' and ''deep sea fishing'' are not used in reference to freshwater inland lakes. ''Territorial waters'' is a term which has evolved in international law, in a context of various degrees of control of ocean waters close to a country's coast.

Accordingly, a watercraft engaged in commercial fishing in a fresh water inland lake such as Lake Tahoe is not used for commercial deep sea fishing outside the territorial waters of this state within the meaning of section 6368. 3/13/96.

600.0205 **Travel Time.** An individual dives for sea urchins and also does some coral diving. The majority of the fishing is done within the three miles of the California coast but some fishing is done outside the territorial waters of this state.

Since the individual does engage in deep sea fishing operations outside the territorial waters of this state, it is appropriate to include the travel time in determining whether the principal use test is met for the watercraft exemption. 11/2/87.

(d) ''PRINCIPAL USE'' TEST

600.0240 **Deep Sea Fishing.** ''Principal use'' refers to actual operations, so, for exemption, operations must involve fishing outside territorial waters of this state over 50 percent of time spent in total operation. 1/31/51.

600.0260 **Deep Sea Fishing.** The total time spent outside the terriorial waters of this state is deducted from the total time spent in all of the actual fishing operations, including the sailing time to and from the fishing grounds. If the time spent outside the territorial waters is greater than the time spent within the territorial waters, it is principally used outside the territorial waters of the state.

WATERCRAFT (Contd.)

The time the watercraft may be in storage or idle in the state should not be considered in determining the place of principal use. 3/16/51.

600.0265 **Fishing Activities.** Fishing activities within the three mile offshore limits of state waters, including the three miles surrounding island territories of this state, do not qualify as being outside the territorial waters of this state regardless of the distance or time it takes to reach these fishing grounds. Thus, a vessel making a trip of 60 miles to fish in waters of island territories of this state is not being used in territorial waters outside this state. The time spent journeying to the island does not qualify as ''operational use'' outside this state. 2/21/86.

600.0280 **Use at Time of Sale.** The principal use to which a watercraft is put, not the particular use in which it is engaged at the time of sale, determines taxability of the sale of a component part thereof. 2/16/51.

(e) COMPONENT PARTS OF WATERCRAFT

600.0300 **Ballast.** A high density mud ballast installed and sealed permanently in the ballast tanks of a vessel, to remain in place 20 years or more except for temporary removal for repairs or inspection of vessel, becomes a component part of watercraft within the meaning of Section 6368. 4/20/65.

600.0320 **Brine Inhibitor,** used in freezing coils as part of refrigeration plant in systems affixed to structure of watercraft, and not requiring replenishment except to maintain proper freezing qualities, becomes component part thereof. 7/11/51.

600.0340 **Cleansing Materials.** A product used in the process of performing repairs to the structural part of a vessel, i.e., cleaning and gas-freeing of fuel tanks in preparation for burning and welding operations, is a consumable item not becoming a component part of the vessel, and hence is taxable. 3/25/55.

600.0345 **Component Parts for Tugboats.** A company operates tugboats and barges inside and outside California. Many of the tugboats that are currently performing nonexempt work were principally engaged in interstate commerce (assisting ships) during their first year of operation. The company purchases tangible personal property which becomes a component part of the tugboats after the company begins using the tugboats for nonexempt work.

Whether the sale of property becoming a component part of watercraft is exempt depends upon the principal use of the watercraft after the sale of the component part. Even though the purchase of the tugboats had originally been exempt, the purchase of component parts are taxable if, within twelve months following the purchase of the component parts, the tugboats are not used principally in interstate or foreign commerce in the transportation for hire of persons or property. 3/12/92.

600.0350 **Computer Software on Floppy Discs.** Floppy discs, containing software necessary to drive computer hardware that is bolted to a vessel, qualify for the exemption provided by Regulation 1594 as a ''component part'' of a watercraft. To be considered a ''component part'' of a watercraft, the property must be an integral part of the watercraft, affixed or attached thereto in a

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substantial manner when in use. Floppy discs are placed into a computer disc drive for temporary use, then removed from the disc drive when they are no longer needed. Although the floppy discs are not permanently attached to the hardware, they are affixed to the hardware in a substantial manner when in use and, thus, are component parts of a watercraft. 7/10/96. 12/5/01. (Am. 2002–3).

600.0360 **Covers,** such as searchlight covers, are not exempt component parts. 9/25/51.

600.0375 **Data Processing Equipment as Part of Watercraft.** A data processing machine that is leased by a ship owner to assist in the record keeping in connection with feeding, housing and serving passengers being carried for hire in foreign commerce, and which is substantially attached to the ship by various anchoring and attachment devices and is connected to the ship's power system, is a component part exempt from tax. 9/13/76.

600.0378 **Diesel Fuel.** Diesel fuel is not considered a component part of a vessel. It is clearly a consumable supply and, thus, does not qualify for the exemption provided under section 6368. 12/14/82.

600.0380 **Direction Finders,** automatic pilots, marine depth sounders, affixed in substantial manner when in use, exempt. 11/21/50.

600.0400 **Filters** affixed to engines become a component part of the watercraft. 3/17/50.

600.0420 **Fire Pumps.** Hand operated fire pumps, mounted on plywood bases for use on fishing vessels are items of portable equipment rather than component parts of the vessel and, hence not within the watercraft exemption. 7/27/53.

600.0430 **Fishing Nets** within ''watercraft'' exemption. Lampara fishing nets, purse seine nets and dragnets used in conjunction with watercraft in commercial deep-sea fishing operations outside the territorial waters of California are not taxable. Lampara nets, like purse seine nets, are attached to the boat by means of a cable held by turns on a winch drum. The winch is secured to the deck and is a permanent part of the boat's structure. Purse seine nets have been exempt from tax under Section 6368. Based on similarity to purse seine nets, dragnets have been considered exempt from tax. The construction, attachment and use of Lampara nets do not differ materially from purse seine nets or dragnets, and are therefore also considered to fall within the ''Watercraft'' exemption. 12/2/74.

600.0440 **Fishing Tackle.** Sales of fishing tackle, such as nets, lines and fish hooks are not exempt, but sales of lag screws, nails and hooks used for repairing an exempt fishing boat are exempt. 6/18/57.

600.0448 **Forklifts.** Forklift trucks used to load and unload cargo on and off a vessel designed to have cargo admitted only through a stern ramp are not component parts of the watercraft, notwithstanding their essential nature to the operation of the vessel and the fact that while the vessel is en route the forklifts are lashed securely to the inner hull by heavy chains. Pursuant to Reg. 1594, to

WATERCRAFT (Contd.)

be a component part of watercraft, the item must be ". . . an integral part of the watercraft, affixed or attached thereto in a substantial manner **when in use**." (Emphasis added.) Forklifts obviously fail this test. 11/5/85.

600.0492 **Lashing Gear.** Wire rope, turnbuckles, shackles and clips qualify as a component parts and exempt from tax when principally used as lashing gear which is affixed to watercraft or an affixed part thereof and used in an exempt operation of the watercraft. Gear which is principally used to lash cargo to itself, to other cargo, or to dunnage not affixed to the vessel would not qualify because the gear would not be affixed to the watercraft. The fact that the equipment is used to lash cargo rather than running gear of the watercraft does not derogate from the exempt status if the watercraft qualifies for the watercraft exemption, nor is the wire rope subject to tax merely because it may be discarded at the end of the voyage. 1/9/80.

600.0500 **Launching Ways** or trestles installed upon a vessel which carries cargo for hire on the high seas, and which become a part of the vessel upon installation for the purpose of handling special cargoes, are component parts exempt from tax. 6/14/54.

600.0520 **Life Boat Radio.** If an item such as a portable life boat radio is securely affixed or attached to a life boat while in use, it qualifies as a component part of watercraft even though in a general way it may be described as portable because it is kept in some suitable storage area on the ship to be removed therefrom in case of emergency and is easily movable for that purpose. 9/4/57.

600.0540 **Life Rafts.** Life Rafts which are affixed or attached to the structure of a watercraft become an integral part of the vessel and qualify for the watercraft exemption. 2/13/68.

600.0560 **Light Globes.** Light globes are not component parts of a watercraft. However, lights and lanterns that are affixed or attached to the watercraft in a substantial manner when in use are component parts of the watercraft. Flashlights, battle lanterns, oil lamps, portable electric lights, and other lights used intermittently at various locations are not exempt under Regulation 1594. 5/25/50.

600.0563 **Live Bait Haulers.** Live bait haulers are engaged in the business of catching live bait to be sold to sportsfishing boat operators and others. This activity constitutes commercial fishing operations since the hauler is engaged in these operations for a profit. Whether sales of the watercraft so engaged are exempt from tax under sec. 6368 depends on whether all the requirements of this statute and Regulation 1594 are met. 8/14/92.

600.0580 **Lumber Dunnage.** Lumber used in the erection of platforms, self-shorings and blocking on vessels for the purpose of increasing cargo capacity and prevention of cargo shifting, is not exempt under the watercraft exemption. 2/5/57.

WATERCRAFT (Contd.)

600.0581 **Lumber Dunnage.** Lumber used in blocking and bracing vehicles and equipment, sheathing ammunition and building false decks, building acid boxes on decks, and building wooden catwalks over and across cargo on deck, does not become a component part of the watercraft when it is only shored and tied together, is never attached to the ship, and is generally removed at the end of the voyage. Tax applies to the sale or use of such lumber as provided in Regulation 1630, Packers, Loaders, and Shippers. 8/1/73.

600.0600 **Manila or Wire Rope** used as running gear, lashing or rigging equipment is component part of vessel and sale is exempt. 7/31/50.

600.0620 **Paint Thinner,** sold to steamship operators, does not become component part of watercraft inasmuch as thinner evaporates in the drying process. 5/19/52.

600.0640. **Paint Used to Repair Vessel.** The sale of paint to be applied to watercraft is exempt under Section 6368 regardless of the fact that the paint is applied by contractors who would be regarded as consumers of the paint.

The law provides that the sale of property becoming a component part of certain watercraft is exempt. The fact that a painting contractor could not execute a so-called watercraft certificate does not deprive the transaction of its exempt status. While the certificate is adapted for use by the operator of watercraft, it could readily be modified for use by a painting contractor. 5/21/52.

600.0660 **Refrigerant Gas,** where bought by operators of watercraft for purpose of replacing refrigerants in systems affixed to structure of watercraft becomes component part of watercraft. 2/6/51.

600.0680 **Spare Parts for Engines** or other items themselves component parts of watercraft constitute ‘‘component parts.’’ Fuel oil is not a component part of watercraft. 1/10/50.

600.0700 **Zinc Electrodes,** used in water cooling system affixed to watercraft become component part of watercraft. 2/16/51.

WINE DEALERS
See Beer, Wine and Liquor Dealers.

610.0000 WORKS OF ART AND MUSEUM PIECES FOR PUBLIC DISPLAY —Regulation 1586

(a) IN GENERAL

610.0500 **Exhibits as a Work of Art.** A firm contracts to create an exhibit as part of a permanent collection of a museum. The exhibit consists of life-size, three-dimensional scenes. A review of the photographs and description of the proposed work indicates it contains elements of both a construction contract and the production of works of art.

WORKS OF ART, ETC. (Contd.)

The scenes themselves are best described as assemblages, the artistic components of which are works of art. On the other hand, if the walls, ceiling, or floor itself was a work of art such as a wall painted with a mural or fresco, it would be viewed as a work of art rather than part of a construction contract. Also, walls, partitions, or ceilings which are in the nature of shadow boxes to enclose the assemblage and set aside from other exhibits, or which are in the nature of backdrops, such as a stage set to establish a background or setting, would be considered part of the work of art. Otherwise, the rules of Regulation 1521 concerning materials and fixtures would apply to the walls, floors, and ceilings which become improvements to real property.

Items not part of the integral artistic components, such as electrical wiring, are not part of the work of art even though supportive of the assemblage (e.g., functioning as illumination). On the other hand, a period lighting fixture or lamp, which is an integral part of the artistic assemblage, is a part of the work of art.

Generally, shelving, display cabinets, and seating which are supportive of the work of art are part of the construction contract or are sales of tangible personal property. On the other hand, such items which are part of the three-dimensional scenes would qualify as part of the work of art.

In summary, some judgment must be exercised in determining what is integral to the work of art. Generally, the shell of the museum is part of the construction contract while the components of the assemblage (work of art) are works of art. Items supportive of the assemblages such as wiring, lighting, ducting, etc., are improvements to realty and part of the construction contract. 10/31/95.

610.0600 **Flower Designs.** A flower artist was hired to create flower designs for a museum for its non-profit auction. The artist sold centerpieces, large shapes, and a ladies room arrangement. The exemptions for the sale or purchase of works of art or museum pieces by or for donation to museums is provided by Sections 6365 and 6366.3 and Regulation 1586. To qualify for exemption, the property in question must meet the definition of ‘‘art’’ contained in Regulation 1586 (b)(1) and be purchased to become part of a permanent collection of the museum. Regulation 1586 (c)(1)(b).

The flower designs were created with fresh flowers. A floral design which is only a display of fresh flowers is not ‘‘art’’ within the meaning of the sales tax exemption statute. Even if the ‘‘flower art’’ met the definition of ‘‘art’’ this particular display was not purchased to become part of the museum’s permanent collection but to decorate certain rooms. The sale is subject to sales tax measured by all amounts paid to the flower artist. 9/6/90.

610.0663 **Screenplay with Sketches.** A museum purchased a 35 page handwritten screenplay that was written by a person known as an artist and not as a playwright. The author made rough sketches in the margins on five pages to illustrate how scenery should be placed on the stage.

Under the statute, the classifications of a work of art depends on whether the object was ‘‘intended to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist.’’ Historical significance may well determine

whether an object is ‘‘important.’’ and worthy of purchase and display by a museum, but it does not determine whether an object is a work of art. In this situation, the author added sketches to the manuscript only to provide directions for placing scenery and not ‘‘to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist.’’ Therefore, the manuscript is not a work of art for tax purposes and it does not qualify for the exemption. 5/1/96.

610.0680 **Whales as Fixtures.** Although the sale and installation of two fiberglass life size model whales at an aquarium constitutes a contract to furnish and install fixtures, the aquarium, if it meets the criteria in Regulation 1586, would qualify as a museum and the sale of the models would be exempt from tax as works of art. Although a nominal charge is made for admission to the area where the whales are on exhibit, the exemption for the purchase is not disqualified because the majority of the museum’s space is open to the public free of charge. 4/9/85.

(b) ORIGINAL WORKS OF ART

610.0750 **Sculpture.** An artist was commissioned by a county to design, fabricate and install a piece of sculpture at a Health Service Complex. The sculpture is a three dimensional work of art which was designed for a specific site on the grounds of the complex.

In general, the sale and installation of a commissioned piece of sculpture is consistent with the definition of a construction contract per Regulation 1521. As such, the tax treatment depends upon the degree to which the artwork is integrated into or merged with a building. If a piece of sculpture maintains its integrity and identity even after installation, the sculpture is a fixture and the artist who furnished and installed the sculpture is a retailer. However, in this case since the sculpture is an original work of art purchased by a county and displayed in an area open to the public, the sale is exempt from tax pursuant to Section 6365. 8/8/89.

610.1750 **Works of Art.** An artist is the retailer of art work which is classified as a ‘‘fixture.’’ Accordingly, an original work of art sold to a city and displayed in an area open to the public in a building is exempt pursuant to section 6365 notwithstanding that it is an improvement to realty. On the other hand, if the artwork is integrated into a building so as to become an integral and inseparable part of a building, such as a mosaic applied on a wall piece by piece, the artwork is ‘‘material.’’ In this case the artist is the consumer of the material and must pay sales or use tax on the material. 7/24/90.

(c) MUSEUM PIECES

610.3500 **Purchase of Artwork for Display in France.** A California county purchased artwork as a gift for its ‘‘sister county’’ in France. The artwork was personally transported to France by members of the Board of Supervisors. The artwork, along with other items, was placed in an enclosed display case, located in France, in the ‘‘several hundred years old’’ county administration building which is open to the public.

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WORKS OF ART, ETC. (Contd.)

This transaction does not qualify for the exemption provided in section 6365. In order to qualify pursuant to section 6365(b)(3), the ''public place'' must be located in California. It does not qualify under section 6365(b)(1) because the ''county'' administration building is not a ''museum'' despite the fact that it may be a historical landmark. A ''museum'' is ''an institution for the acquisition, preservation, study, and exhibition of work of artistic, historical or scientific value.'' The building at issue is an administration building. 10/12/90.

610.4750 **Sculpture.** An artist sold a sailplane sculpture to a foundation for display at an airport at no charge to the public or city. The foundation did not purchase the sculpture for donation to any governmental entities or nonprofit organizations listed in Regulation 1586(c)(1). The foundation also does not operate a public museum under contract with a state or local governmental entity and the sculpture was not purchased for display in a museum. Under these facts, tax applies to the sale of the sculpture to the foundation. 10/16/96.

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X

X-RAY LABORATORIES

See Photographers, Photostat Producers, Photo Finishers and X-ray Laboratories.